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ABSTRACT

This composite document presents Part 30 of the California Education Code relative to special education programs, and includes relevant regulations from Chapter 1 of Division 3 of Title 5 of the Code. It also contains those provisions of the Health and Safety Code, Government Code, and Welfare and Institutions Code having a direct impact on special education and related services. Also included are 1989 provisions to ensure that any individual with exceptional needs who has an active individualized education program will receive an appropriate education placement without delay upon his or her discharge from a hospital, residential medical facility, children's institution, or foster family home. A table of contents provides a guide to Part 30 of the Education Code, provisions not included in Part 30, and Title 5. Among specific topics covered are: administration; elements of the local plan; identification and referral, assessment, instructional planning, implementation, and review; demonstration programs; early education for individuals with exceptional needs; career and vocational education programs, transition services, and Project Workability; interagency agreements; procedural safeguards; evaluation, audits, and information; and programs for individuals with exceptional needs residing in state hospitals. Marginal notations are also available to help users find appropriate parts of the Code. (DB)

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# California Special Education Programs

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## A Composite of Laws*

### Education Code - Part 30, Other Related Laws, and California Code of Regulations - Title 5

*Revised to Cover Laws Enacted During 1989

Twelfth Edition

CALIFORNIA STATE DEPARTMENT OF EDUCATION
Sacramento, 1990

EC 231181

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# California
# Special Education
# Programs

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## A Composite of Laws*

### Education Code - Part 30,
### Other Related Laws, and
### California Code of Regulations - Title 5

Prepared by the
**Special Education Division**
**California State Department of Education**

*Revised to Cover Laws Enacted During 1989

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# FOREWORD

## EDUCATION CODE - PART 30

## CALIFORNIA CODE OF REGULATIONS - TITLE 5

## SPECIAL EDUCATION PROGRAMS

This twelfth edition of California Special Education Programs - A Composite of Laws covers Part 30 of the Education Code relative to special education programs, and for the first time, includes Chapter 1 of Division 3 of Title 5 of the California Code of Regulations relative to special education for handicapped children. It also contains selected provisions of the Education Code, Health and Safety Code, Government Code, and Welfare and Institutions Code having a direct impact on special education and related services for individuals with exceptional needs.

Included in this edition are amendments to Chapter 26.5 of the Government Code added by Assembly Bill 1744 (Friedman), Chapter 677, Statutes of 1989, provisions which seek to ensure that any individual with exceptional needs who has an active individualized education program will receive an appropriate education placement without delay upon his or her discharge from a hospital, residential medical facility, licensed children's institution or foster family home.

Part 30 of the Education Code was rewritten in 1980, primarily by Senate Bill 1870 (Rodda) (Chapter 797), which became law on July 28, 1980. This bill repealed all former special education categorical programs and Master Plan for Special Education program Education Code sections that were in effect on January 1, 1980; and restructured and added code sections implementing the Master Plan for Special Education statewide. Since the passage of SB 1870, 53 legislative measures have modified California's special education statutes.

The California Code of Regulations, Title 5 regulations governing special education, were originally adopted and became effective in March of 1981. Substantive amendments were adopted by the State Board of Education on December 11, 1987, approved by the Office of Administrative Law on March 21, 1988, and submitted to the Secretary of State on March 21, 1988. These most recent amendments to the regulations became effective on April 20, 1988.

# TABLE OF CONTENTS

## EDUCATION CODE - PART 30 - SPECIAL EDUCATION PROGRAMS

Commencing With Education Code Section — Page

FOREWORD iii

CHAPTER 1. GENERAL PROVISIONS

Article 1. Intent 56000 1
Article 2. Definitions 56020 3
Article 3. General Provisions 56040 6
Article 3.5. Surrogate Parents 56050 6
Article 4. Substitute Teachers 56060 7

CHAPTER 2. ADMINISTRATION

Article 1. State Board of Education 56100 8
Article 2. Superintendent of Public Instruction 56120 9
Article 3. County Offices 56140 11
Article 4. Juvenile Court Schools 56150 12
Article 5. Licensed Children's Institutions and Foster Family Homes 56155 12
Article 5.5. Public Hospitals, Proprietary Hospitals and Other Residential Medical Facilities 56167 16
Article 6. School Districts 56170 17
Article 7. Community Advisory Committee 56190 19

CHAPTER 3. ELEMENTS OF THE LOCAL PLAN

Article 1. State Requirements 56200 21
Article 2. Local Requirements 56220 22
Article 3. Staff Development 56240 24

CHAPTER 4. IDENTIFICATION AND REFERRAL, ASSESSMENT, INSTRUCTIONAL PLANNING, IMPLEMENTATION, AND REVIEW

Article 1. Identification and Referral 56300 27
Article 2. Assessment 56320 27
Article 2.5. Eligibility Criteria for Special Education and Related Services on the Basis of Language and Speech Disorder or Specific Learning Disabilities 56333 32
Article 3. Instructional Planning and Individualized Education Program 56340 33

| | | Commencing With Education Code Section | Page |
|---|---|---|---|
| Article 4. | Implementation | 56360 | 38 |
| Article 5. | Review | 56380 | 49 |
| CHAPTER 4.3. | DEMONSTRATION PROGRAMS | 56400 | 50 |
| CHAPTER 4.4. | EARLY EDUCATION FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS | 56425 | 51 |
| CHAPTER 4.45. | SPECIAL EDUCATION PROGRAMS FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS BETWEEN THE AGES OF THREE AND FIVE YEARS, INCLUSIVE | 56440 | 58 |

CHAPTER 4.5. CAREER AND VOCATIONAL EDUCATION PROGRAMS, TRANSITION SERVICES, AND PROJECT WORKABILITY

| | | | |
|---|---|---|---|
| Article 1. | Career and Vocational Education Programs | 56452 | 68 |
| Article 2. | Transition Services | 56460 | 69 |
| Article 3. | Project Workability | 56470 | 71 |
| CHAPTER 4.7. | INTERAGENCY AGREEMENTS | 56475 | 72 |
| CHAPTER 5. | PROCEDURAL SAFEGUARDS | 56500 | 73 |
| CHAPTER 6. | EVALUATION, AUDITS, AND INFORMATION | 56600 | 81 |

CHAPTER 7. FUNDING OF SPECIAL EDUCATION PROGRAMS

| | | | |
|---|---|---|---|
| Article 1. | State Aid Apportionments | 56700 | 84 |
| Article 2. | Computation of State Aid | 56710 | 84 |
| Article 3. | Instructional Personnel Services | 56720 | 85 |
| Article 4. | Support Services | 56730 | 94 |
| Article 5. | Nonpublic, Nonsectarian School Services | 56740 | 98 |
| Article 6. | Local General Fund Contribution | 56750 | 100 |
| Article 7. | Service Proportions | 56760 | 101 |
| Article 8. | Low Incidence Funding | 56771 | 103 |
| Article 8.5. | Licensed Children's Institutions | 56775 | 103 |
| Article 9. | Program Specialists and Regionalized Services | 56780 | 106 |
| Article 10. | Deficit Funding | 56790 | 107 |
| Article 12. | General Provisions | 56820 | 108 |

| | | Commencing With Education Code Section | Page |
|---|---|---|---|
| CHAPTER 8. | SPECIAL EDUCATION PROGRAMS FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS RESIDING IN STATE HOSPITALS | 56850 | 112 |
| CHAPTER 9. | JOINT FUNDING FOR EDUCATION OF HANDICAPPED CHILDREN ACT OF 1980 | 56875 | 118 |

SELECTED PROVISIONS NOT INCLUDED IN PART 30

| | | |
|---|---|---|
| NEW BUILDING AREA ALLOWANCES FOR SPECIAL EDUCATION PROGRAMS<br>(Education Code - Part 10) | 17747 | 124 |
| NEW SCHOOL FACILITIES - MAXIMIZING INTERACTION<br>(Education Code - Part 10) | 17747.5 | 126 |
| PORTABLE CLASSROOMS FOR INFANT/PRESCHOOL CHILDREN<br>(Education Code - Part 10) | 17789.5 | 127 |
| COMMISSION ON SPECIAL EDUCATION<br>(Education Code - Part 20) | 33590 | 128 |
| TRANSPORTATION CONSOLIDATION<br>(Education Code - Part 24) | 41850 | 130 |
| REVENUE LIMITS FOR PUPILS IN SPECIAL CLASSES AND CENTERS<br>(Education Code - Part 24) | 42238.9 | 137 |
| REAPPROPRIATION OF PL 94-142 FUNDS<br>(Education Code - Part 24) | 42242 | 137 |
| CERTIFICATED EMPLOYEE EMPLOYMENT RIGHTS<br>(Education Code - Part 25) | 44903.7 | 137 |
| LONGER DAY-YEAR FOR COUNTY OPERATED SPECIAL EDUCATION PROGRAMS<br>(Education Code - Part 26) | 46200.5 | 139 |
| SUSPENSION/EXPULSION OF HANDICAPPED PUPILS<br>(Education Code - Part 27) | 48900 | 141 |
| SPECIALIZED PHYSICAL HEALTH CARE SERVICES<br>(Education Code - Part 27) | 49423.5 | 148 |
| EARLY DIAGNOSIS OF LEARNING DISABILITIES<br>(Education Code - Part 27) | 49580 | 149 |
| DIFFERENTIAL PROFICIENCY STANDARDS<br>(Education Code - Part 28) | 51215 | 151 |

| | Commencing With Education Code Section | Page |
|---|---|---|
| WITHHOLDING OF DIPLOMA OF GRADUATION<br>(Education Code - Part 28) | 51412 | 153 |
| EARLY INTERVENTION FOR SCHOOL SUCCESS<br>(Education Code - Part 29) | 54685 | 153 |
| STATE SPECIAL SCHOOLS EXCESS COST PROVISION<br>(Education Code - Part 32) | 59300 | 157 |
| SPECIAL EDUCATION PROGRAM SUNSET DATE<br>(Education Code - Part 34) | 62000.8 | 157 |

| | Commencing With Code Section | Page |
|---|---|---|
| INTERAGENCY RESPONSIBILITIES FOR RELATED SERVICES<br>(Government Code - Chapter 26.5., Division 7, Title 1)<br>(AB 3632 - Chapter 1747, Statutes of 1984, As Amended by AB 882 - Chapter 1274, Statutes of 1985, As Amended by AB 3012 - Chapter 1133, Statutes of 1986, As Amended by AB 1744 - Chapter 677, Statutes of 1989) | Section 1 - Non-codified<br>7570 | 158<br>158 |
| CALIFORNIA CHILDREN'S SERVICE MEDICAL THERAPY<br>(Health and Safety Code)<br>(AB 3012 - Chapter 1133, Statutes of 1986) | 255.3 | 170 |
| SERIOUSLY EMOTIONALLY DISTURBED OUT-OF-HOME CARE<br>(Welfare and Institutions Code - Chapter 6, Division 9, Part 6)<br>(AB 882 - Chapter 1274, Statutes of 1985) | 18350 | 170 |
| EARLY INTERVENTION SERVICES ACT<br>(Government Code - Title 14, Chapter 1)<br>(AB 114 - Chapter 26, Statutes of 1985) | 95000 | 173 |
| LIST OF SPECIAL EDUCATION CODE SECTIONS/LEGISLATIVE BILLS<br>EDUCATION CODE - PART 30. SPECIAL EDUCATION PROGRAMS | | 175 |
| STATUTES MODIFYING SPECIAL EDUCATION CODE SECTIONS SINCE 1980 | | 178 |

# TABLE OF CONTENTS

## CALIFORNIA CODE OF REGULATIONS - TITLE 5
## SPECIAL EDUCATION

DIVISION 3. HANDICAPPED CHILDREN

CHAPTER 1. SPECIAL EDUCATION

| | | Commencing With California Code of Regulations Section | Page |
|---|---|---|---|
| Article 1. | General Provisions | 3000 | 183 |
| Article 2. | Administration | 3010 | 187 |
| Article 3. | Identification, Referral, and Assessment | 3021 | 187 |
| Article 3.1. | Individuals with Exceptional Needs | 3030 | 191 |
| Article 4. | Instructional Planning and Individualized Education Program | 3040 | 197 |
| Article 5. | Implementation (Program Components) | 3051 | 200 |
| Article 6. | Nonpublic, Nonsectarian School and Agency Services | 3061 | 215 |
| Article 7. | Procedural Safeguards | 3080 | 227 |

# PART 30. SPECIAL EDUCATION PROGRAMS

## CHAPTER 1. GENERAL PROVISIONS

- GENERAL PROVISIONS

### Article 1. Intent

- LEGISLATIVE INTENT

56000. The Legislature finds and declares that all individuals with exceptional needs have a right to participate in free appropriate public education and that special educational instruction and services for these persons are needed in order to ensure them of the right to an appropriate educational opportunity to meet their unique needs.

- Free Appropriate Public Education

It is the intent of the Legislature to unify and improve special education programs in California under the flexible program design of the Master Plan for Special Education. It is the further intent of the Legislature to assure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under Public Law 94-142.

- Unify and Improve Programs Under the Master Plan
- Assure Rights to Appropriate Programs and Services
- PL 94-142 Rights

It is the further intent of the Legislature that nothing in this part shall be construed to abrogate any right provided individuals with exceptional needs and their parents or guardians under Public Law 94-142.

It is the further intent of the Legislature that the Master Plan for Special Education provide an educational opportunity for individuals with exceptional needs which is equal to or better than that provided prior to the implementation of programs under this part, including, but not limited to, those provided to individuals previously served in a development center for handicapped pupils.

- Provide Educational Opportunity

It is the intent of the Legislature that the restructuring of special education programs as set forth in the Master Plan for Special Education be implemented in accordance with provisions of this part by all school districts and county offices during a two-year transitional period commencing with fiscal year 1980-81, with full implementation to be completed by June 30, 1982.

- Full Implementation by June 30, 1982

56000.5. The Legislature finds and declares that:

(a) Pupils with low-incidence disabilities, as a group, make up less than 1 percent of the total statewide enrollment for kindergarten through grade 12.

- Low-Incidence Disabilities

(b) Pupils with low-incidence disabilities require highly specialized services, equipment and materials.

56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed pursuant to Sections 51215 and 51216.

- Course of Study

(b) By June 30, 1991, early educational opportunities shall be available to all children between the ages of three and five years, inclusive, who require special education and services.

- Between 3 and 5

(c) Early educational opportunities may be made available to children younger than three years of age who require intensive special education and services and their parents.

- Ages Birth to 3

(d) Any child younger than five years, potentially eligible for special education shall be afforded the protections provided by this part and by federal law commencing with his or her referral for special education instruction and services.

- Protections

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

- Written IEP

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with the provisions of this part. This plan for special education shall be developed cooperatively with input from the community advisory committee and appropriate representation from special and regular teachers and administrators selected by the groups they represent to ensure effective participation and communications.

- Local Plan Development

(g) Individuals with exceptional needs are offered special assistance programs that promote maximum interaction with the general school population in a manner that is appropriate to the needs of both.

- Maximum Interaction

(h) Pupils be transferred out of special education programs when special education services are no longer needed.

- Transferred Out

(i) The unnecessary use of labels is avoided in providing special education and related services for individuals with exceptional needs.

- Avoid Unnecessary Use of Labels

- Assessment Procedures and Materials

(j) Procedures and materials for assessment and placement of individuals with exceptional needs shall be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument shall be the sole criterion for determining placement of a pupil. The procedures and materials for assessment and placement shall be in the individual's mode of communication. Procedures and materials for use with pupils of limited English proficiency as defined in subdivision (m) of Section 52163, shall be in the individual's primary language. All assessment materials and procedures shall be selected and administered pursuant to Section 56320.

- Coordination of Educational Programs

(k) Educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic, nonsectarian schools, regional occupational centers and programs and postsecondary and adult programs for individuals with exceptional needs.

- Psychological and Health Services

(l) Psychological and health services for individuals with exceptional needs shall be available to each school site.

- Continuous Program Evaluation

(m) Continuous evaluation of the effectiveness of these special education programs by the school district, special education local plan area, or county office shall be made to ensure the highest quality educational offerings.

- Qualified Staff

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and that positive efforts to employ qualified handicapped individuals are made.

- Prepared Personnel

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

- Repeal Clause*

(p) This section shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, pursuant to Section 56448, and as of that date is repealed.

## Article 2. Definitions

- DEFINITIONS

56020. As used in this part, the definitions prescribed by this article apply unless the context otherwise requires.

- Board

56021. "Board" means the State Board of Education.

*NOTE: If California ever terminates participation in Title II of Public Law 99-457 (Federal Preschool Grant Program), Section 56001 reverts back to the way it read prior to July 29, 1987.

56022. "County office" means office of the county superintendent of schools.

- County Office

56023. "Day" means a calendar day.

- Day

56024. "Department" means the Department of Education.

- Department

56025. "District" means school district.

- District

56026. "Individuals with exceptional needs" means those persons who satisfy all the following:

- Individuals with Exceptional Needs

(a) Identified by an individualized education program team as a handicapped child as that term was defined in subsection (1) of Section 1401 of Title 20 of the United States Code as it read July 1, 1980.

- Identified by IEP Team
- Federal Definition

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

- Impairment Requires Special Instruction/ Services

(c) Come within one of the following age categories:

- Age Categories

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

- Younger Than 3

(2) Between the ages of three and five years, and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education; or between the ages of three and five years, inclusive, and identified by the district, special education local plan area, or county office pursuant to Section 56441.11.

- Between 3 and 5

(3) Between the ages of five years and 18 years, inclusive.

- Between 5 and 18

(4) Between the ages of 19 and 21, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216. Any person who becomes 22 years of age while participating in a program under this part may continue his or her participation in the program for the remainder of the then current school year.

- Between 19 and 21
- Twenty-second Birthday

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

- Eligibility Criteria

(e) Unless handicapped within the meaning of subdivisions (a) to (d), inclusive, pupils whose

- Not Individuals with Exceptional Needs educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

- Repeal Clause*

(f) This section shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, pursuant to Section 56448, and as of that date is repealed.

- Low-Incidence Disability

56026.5. "Low incidence disability" means a severe handicapping condition with an expected incidence rate of less than one percent of the total statewide enrollment in kindergarten through grade 12. For purposes of this definition, severe handicapping conditions are hearing impairments, vision impairments, and severe orthopedic impairments, or any combination thereof.

- Local Plan

56027. "Local plan" means a plan that meets the requirements of Chapter 3 (commencing with Section 56200) and that is submitted by a school district, special education local plan area, or county office.

- Parent

56028. "Parent", includes any person having legal custody of a child. "Parent" in addition, includes any adult pupil for whom no guardian or conservator has been appointed and the person having custody of a minor if neither the parent or legal guardian can be notified of the educational actions under consideration. "Parent" also includes a parent surrogate.

- Referral for Assessment

56029. "Referral for assessment" means any written request for assessment to identify an individual with exceptional needs made by a parent, teacher, or other service provider.

- Responsible Local Agency

56030. "Responsible local agency" means the school district or county office designated in the local plan as the entity whose duties shall include, but are not limited to, receiving and distributing regionalized services funds, providing administrative support, and coordinating the implementation of the plan.

- Severely Handicapped

56030.5. "Severely handicapped" means individuals with exceptional needs who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, severe mental retardation, and those individuals who would have been eligible for enrollment in a development center for handicapped

*NOTE: If California ever terminates participation in Title II of Public Law 99-457 (Federal Preschool Grant Program), Section 56026 reverts back to the way it read prior to July 29, 1987.

pupils under Chapter 6 (commencing with Section 56800) of this part, as it read on January 1, 1980.

- Special Education
- Specially Designed Instruction

56031. "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, which may be needed to assist such individuals to benefit from specially designed instruction.

- Integral Part of Public Education
- Maximum Interaction

Special education is an integral part of the total public education system and provides education in a manner that promotes maximum interaction between handicapped and nonhandicapped pupils in a manner which is appropriate to the needs of both.

- Full Continuum of Program Options

Special education provides a full continuum of program options to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment.

- Grouped for Instructional Purposes and Needs

Individuals with exceptional needs shall be grouped for instructional purposes according their instructional needs.

- Superintendent

56033. "Superintendent" means the Superintendent of Public Instruction.

- GENERAL PROVISIONS

### Article 3. General Provisions

- Free Appropriate Educational Instruction/Services

56040. Every individual with exceptional needs, who is eligible to receive educational instruction, related services, or both under this part shall receive such educational instruction, services, or both, at no cost to his or her parents or, as appropriate, to him or her.

- SURROGATE PARENTS

### Article 3.5. Surrogate Parents

- Definition

56050. (a) For the purposes of this article, "surrogate parent" shall be defined as it is defined in the federal regulations adopted pursuant to Public Law 94-142.

- Representation

(b) A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate education to the individual.

- Liability Protection

(c) A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

## Article 4. Substitute Teachers

- SUBSTITUTE TEACHERS

- Noncredentialed Substitutes Prohibited

56060. A noncredentialed person shall not substitute for any special education certificated position.

- Substitute Teacher Qualifications

56061. A person holding a valid credential authorizing substitute teaching may serve as substitute for the appropriately credentialed special education teacher as follows:

- Number of Days

(a) Except as provided in subdivisions (b) and (c), the employer shall not employ an inappropriately credentialed substitute teacher for a period of more than 20 cumulative school days for each special education teacher absent during each school year.

- Extension of 20 School Days

(b) Upon application by the district or county office, the superintendent may approve an extension of 20 school days in addition to those authorized by subdivision (a).

- Beyond 40 School Days

(c) Only in extraordinary circumstances may additional number of days be granted beyond the 40 school days provided for by subdivisions (a) and (b). Such additional days shall be granted in writing by the superintendent. The superintendent shall report to the board on all requests granted for an additional number of days pursuant to this subdivision.

- Substitute Teacher Priorities

56062. The employer shall use the following priorities in placing substitute teachers in special education classrooms:

(a) A substitute teacher with the appropriate special education credential or credentials.

(b) A substitute teacher with any other special education credential or credentials.

(c) A substitute teacher with a regular teaching credential.

- Employer Maintains Lists

56063. The employer shall be responsible for seeking, and maintaining lists of, appropriately credentialed substitute teachers. The employer shall contact institutions of higher education with approved special education programs for possible recommendations of appropriately credentialed special education personnel.

## CHAPTER 2. ADMINISTRATION

- ADMINISTRATION

### Article 1. State Board of Education

- STATE BOARD OF EDUCATION

56100. The State Board of Education shall do all the following:

- Adopt Rules/Regulations

(a) Adopt rules and regulations necessary for the efficient administration of this part.

- Approve Local Plans

(b) Adopt criteria and procedures for the review and approval by the board of local plans. Local plans may be approved for up to three years.

- Adopt Size and Scope Standards

(c) Adopt size and scope standards for use by districts, special education local plan areas, and county offices, pursuant to subdivision (a) of Section 56170.

- Provide Review of Department Decisions

(d) Provide review, upon petition, to any district, special education local plan area, or county office that appeals a decision made by the department which affects its providing services under this part except a decision made pursuant to Chapter 5 (commencing with Section 56500).

- Review/Approve Program Evaluation Plan

(e) Review and approve a program evaluation plan for special education programs provided by this part in accordance with Chapter 6 (commencing with Section 56600). This plan may be approved for up to three years.

- Recommend Adoption of Professional Standards

(f) Recommend to the Commission on Teacher Credentialing the adoption of standards for the certification of professional personnel for special education programs conducted pursuant to this part.

- Adopt Specific Procedural Criteria for Identification

(g) Adopt regulations to provide specific procedural criteria and guidelines for the identification of pupils as individuals with exceptional needs.

- Adopt Reasonable Pupil Progress/Achievement Guidelines

(h) Adopt guidelines of reasonable pupil progress and achievement for individuals with exceptional needs. The guidelines shall be developed to aid teachers and parents in assessing an individual pupil's education program and the appropriateness of the special education services.

- Adopt Title 5 Regulations

(i) In accordance with the requirements of federal law, adopt regulations for all educational programs for individuals with exceptional needs, including programs administered by other state or local agencies.

- Adopt Rules/Regulations on Due Process Rights

(j) Adopt uniform rules and regulations relating to parental due process rights in the area of special education.

- State Board Waivers

56101. (a) Any district, special education local plan area, county office, or public education agency as defined in Section 56500 may request the board to grant a waiver of any provision of this code or regulations adopted pursuant to any such provision if the waiver is necessary or beneficial to the content and implementation of the pupil's individualized education program and does not abrogate any right provided individuals with exceptional needs and their parents or guardians under Public Law 94-142, or to the compliance of a district, special education local plan area, or county office with Public Law 94-142, as amended, Section 504 of Public Law 93-112, as amended, and federal regulations relating thereto.

- Whole or Partial Waiver

(b) The board may grant, in whole or in part, any such request when the facts indicate that failure to do so would hinder implementation of the pupil's individualized education program or compliance by a district, special education local plan area, or county office with federal mandates for a free, appropriate education for handicapped children.

- SUPERINTENDENT OF PUBLIC INSTRUCTION

## Article 2. Superintendent of Public Instruction

- Administer Special Education Law

56120. The superintendent shall administer the provisions of this part.

- Grant Approval of Local Plan Organization

56121. The superintendent shall grant approval of the organization of the local plans within each county.

- Establish Local Plan Development Guidelines

56122. The superintendent shall establish guidelines for the development of local plans, including a standard format for local plans, and provide assistance in the development of local plans. The purposes of such guidelines and assistance shall be to help districts and county offices benefit from the experience of other local agencies that implement programs under this part, including, but not limited to, reducing paperwork, increasing parental involvement, and providing effective staff development activities. To the extent possible, all forms, reports, and evaluations shall be designed to satisfy simultaneously state and federal requirements.

- Review/Recommend to State Board on Local Plans

56123. The superintendent shall review and recommend to the board for approval, local plans developed and submitted in accordance with this part.

- Promote Innovation/ Improvement in Special Education

56124. The superintendent shall promote innovation and improvement in the field of special education at the public and nonpublic, nonsectarian school, district, county, and state levels.

56125. The superintendent shall monitor the implementation of local plans by periodically conducting onsite program and fiscal reviews.

- Monitor Local Plan Implementation

56126. The superintendent shall encourage the maximum practicable involvement of parents of children enrolled in special education programs.

- Encourage Maximum Parent Involvement

56127. The superintendent shall make recommendations in the areas of staff development, curriculum, testing and multicultural assessment, and the development of materials for special education programs.

- Make Recommendations for Special Education Programs

56128. The superintendent shall prepare for board approval, as necessary, any state plan required by federal law in order that this state may qualify for any federal funds available for the education of individuals with exceptional needs.

- Prepare PL 94-142 State Plan

56129. The superintendent shall maintain the state special schools in accordance with Part 32 (commencing with Section 59000) so that the services of those schools are coordinated with the services of the district, special education local plan area, or the county office.

- Maintain State Special Schools and Coordinate Services

56130. The superintendent shall develop in accordance with Sections 33401 and 55602, an annual program evaluation plan and report of special education programs authorized under this part for submission to the board.

- Develop Annual Program Evaluation Plan

56131. The superintendent shall apportion funds in accordance with Chapter 7 (commencing with Section 56700) and approved local plans.

- Apportion Funds

56132. The superintendent shall assist districts and county offices in the improvement and evaluation of their programs.

- Assist in Improvement/Evaluation of Local Programs

56133. The superintendent shall provide for the mediation conference prescribed by Sections 56502 and 56503 and the state hearing prescribed by Section 56505.

- Provide for Mediation Conference

56134. The superintendent shall perform the duties prescribed by Chapter 4.5 (commencing with Section 56450).

- Promote Career/Vocational Education

56135. (a) The superintendent shall be responsible for assuring provision of, and supervising, education and related services to individuals with exceptional needs as specifically required pursuant to Public Law 94-142, the Education for All Handicapped Children Act of 1975.

- Assure Provision of/Supervise Education/Related Services Required by PL 94-142

(b) Nothing in this part shall be construed to authorize the superintendent to prescribe health care services.

- Excludes Prescription of Health Care Services

56136. The superintendent shall develop guidelines for each low incidence disability area and provide technical assistance to parents,

- Develop Low-Incidence Disability Guidelines teachers, and administrators regarding the implementation of the guidelines. The guidelines shall clarify the identification, assessment, planning of, and the provision of, specialized services to pupils with low incidence disabilities. The superintendent shall consider the guidelines when monitoring programs serving pupils with low incidence disabilities pursuant to Section 56825. The adopted guidelines shall be promulgated for the purpose of establishing recommended guidelines and shall not operate to impose minimum state requirements.

- Develop and Disseminate Directories

56137. The superintendent shall develop, update every other year, and disseminate directories of public and private agencies providing services to pupils with low-incidence disabilities. The directories shall be made available as reference directories to parents, teachers, and administrators. The directories shall include, but need not be limited to, the following information:

(a) A description of each agency providing services and program options within each disability area.

(b) The specialized services and program options provided, including infant and preschool programs.

(c) The number of credentialed and certificated staff providing specialized services.

(d) The names, addresses, and telephone numbers of agency administrators or other individuals responsible for the programs.

- COUNTY OFFICES

## Article 3. County Offices

56140. County offices shall do all of the following:

- Countywide Plan

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56200 and which ensures that all individuals with exceptional needs will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

- Approve/Disapprove Proposed Local Plan

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Such approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

- Submit Approved Local Plan to State Superintendent

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on such an appeal within 30 days of receipt of the appeal.

- Return Disapproved Plan to District

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

- Local Plan Implementation Approval

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

- State On-Site Review

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56170. Any such plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

- Join Districts to Submit Plan(s)

### Article 4. Juvenile Court Schools

- JUVENILE COURT SCHOOLS

56150. Special education programs authorized by this part shall be provided, pursuant to Section 48645.2, for individuals with exceptional needs who have been adjudicated by the juvenile court for placement in a juvenile hall or juvenile home, day center, ranch, or camp, or for individuals with exceptional needs placed in a county community school pursuant to Section 1981.

- Programs Provided Once Individual Adjudicated

### Article 5. Licensed Children's Institutions and Foster Family Homes

- LICENSED CHILDREN'S INSTITUTIONS AND FOSTER FAMILY HOMES

56155. The provisions of this article shall only apply to individuals with exceptional needs placed in a licensed children's institution or foster family home by a court, regional center for the developmentally disabled, or public agency, other than an educational agency.

- Application of Article

56155.5. (a) As used in this article, "licensed children's institution" means a residential facility which is licensed by the state, or other public agency which has delegated authority by

- LCI Definition

contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. "Licensed children's institution" in addition, includes a group home as defined by subdivision (a) of Section 80001 of Title 22 of the California Administrative Code.

- Foster Family Home Definition

(b) As used in this article, "foster family home" means a family residence which is licensed by the state, or other public agency which has delegated authority by contract with the state to license, to provide 24-hour nonmedical care and supervision for not more than six foster children, including, but not limited to, individuals with exceptional needs. "Foster family home," in addition, includes a small family home as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

- Referring/Placing Agencies

56156. (a) Each court, regional center for the developmentally disabled, or public agency that engages in referring children to, or placing children in, licensed children's institutions shall report to the special education administrator of the district, special education local plan area, or county office in which the licensed children's institution is located any referral or admission of a child who is potentially eligible for special education.

- Identify Responsible Individual

(b) At the time of placement in a licensed children's institution or foster family home, each court, regional center for the developmentally disabled, or public agency shall identify the individual responsible for representing the interests of the child for educational and related services.

- LCI Operators

(c) Each person licensed by the state to operate a licensed children's institution, or his or her designee, shall notify the special education administrator of the district, special education local plan area, or county office in which the licensed children's institution is located of any child potentially eligible for special education who resides at the facility.

- County Office Maintains List

(d) The county office shall maintain a current list of licensed children's institutions located within the county and shall notify each district, special education local plan area, or county office within the county of the names of licensed children's institutions located in the geographical area covered by each local plan. The county office shall notify the director of each licensed children's institution of the appropriate person to contact regarding individuals with exceptional needs.

- Educational Responsibility

56156.5. (a) Each district, special education local plan area, or county office shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children's institutions and foster family homes located in the geographical area covered by the local plan.

- Local Written Agreements

(b) In multidistrict and district and county office local plan areas, local written agreements shall be developed, pursuant to subdivision (f) of Section 56220, to identify the public education entities that will provide the special education services.

- No Local Agreement
- County Office Responsibility
- District Responsibility
- RLA Responsibility

(c) If there is no local agreement, special education services for individuals with exceptional needs residing in licensed children's institutions shall be the responsibility of the county office in the county in which the institution is located, if the county office is part of the special education local plan area, and special education services for individuals with exceptional needs residing in foster family homes shall be the responsibility of the district in which the foster family home is located. If a county office is not a part of the special education local plan area, special education services for individuals with exceptional needs residing in licensed children's institutions, pursuant to this subdivision, shall be the responsibility of the responsible local agency or other administrative entity of the special education local plan area. This program responsibility shall continue until the time local written agreements are developed pursuant to subdivision (f) of Section 56220.

- Residence of Parent

56156.6. If the district in which the licensed children's institution or foster family home is located is also the district of residence of the parent of the individual with exceptional needs, and if the parent retains legal responsibility for the child's education, Section 56775 shall not apply.

- First Consider Public Options

56157. (a) In providing appropriate programs to individuals with exceptional needs residing in licensed children's institutions or foster family homes, the district, special education local plan area, or county office shall first consider services in programs operated by public education agencies for individuals with exceptional needs. If those programs are not appropriate, special education and related services shall be provided by contract with a nonpublic, nonsectarian school.

- Contracts

(b) If special education and related services are provided by contract with a nonpublic, nonsectarian school, or with a licensed children's institution under this article, the terms of the contract shall be developed in accordance with the provisions of Section 56366.

- Residential Costs/Non-education Services

56159. If a district, special education local plan area, or county office does not make the placement decision of an individual with exceptional needs in a licensed children's institution or in a foster family home, the court, regional center for the developmentally disabled, or public agency, excluding an education agency, placing the individual in the institution, shall be responsible for the residential costs and the cost of noneducation services of the individual.

- Apportionment of Funds

56160. (a) The superintendent shall apportion, pursuant to Chapter 7 (commencing with Section 56700), funds directly to each district or county office operating programs under this article.

- Nonpublic School Reimbursements

(b) Reimbursements for nonpublic, nonsectarian school placements shall be made pursuant to Section 56775 to each district or county office contracting for services under this article.

- Revenue Calculations

(c) For purposes of the revenue calculations required pursuant to subdivision (a) of Section 56712, the district in which the licensed children's institution or foster family home is located shall be considered the district of residence.

- Not Subject to Service Proportions and Deficit Provisions

56161. Individuals with exceptional needs served under this article shall not be subject to subdivision (a) of Section 56760 and the deficit provisions prescribed by Article 10 (commencing with Section 56790) of Chapter 7. In addition, if available funds are insufficient to fully fund entitlements pursuant to Article 10 (commencing with Section 41850) of Chapter 5 of Part 24, no deficit shall be applied to the portion of the entitlements for services to individuals prescribed in Section 56155. However, those pupils and appropriate instructional personnel units required to provide educational services to those pupils, shall be included in the computations prescribed in Section 56728.5.

- Included in April Pupil Count

- Grandfather Clause

56162. Individuals with exceptional needs placed in a licensed children's institution or foster family home by a court, regional center for the developmentally disabled, or public agency, other than an educational agency, prior to the effective date of this article, shall be considered residents of the geographical area of the local plan in which the licensed children's institution or foster family home is located, for special education and related services pursuant to the provisions of this article.

- Certification

56163. A licensed children's institution which provides nonsectarian educational programs for individuals with exceptional needs shall be certified by the department as prescribed by subdivision (c) of Section 56366.

56164. This article shall not apply to programs operating in state hospitals and juvenile court schools.

- Exclusions

56165. This article shall not apply to individuals with exceptional needs placed in a licensed children's institution pursuant to Section 56365.

- Rules/Regulations

56166. The board shall adopt rules and regulations to implement the provisions of this article.

- Operative Date

56166.5. This article shall become operative July 1, 1982.

## Article 5.5. Public Hospitals, Proprietary Hospitals and Other Residential Medical Facilities

- PUBLIC HOSPITALS, PROPRIETARY HOSPITALS

- Educational Responsibility
- Local Written Agreements

56167. (a) Individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes are the educational responsibility of the district, special education local plan area, or county office in which the hospital or facility is located, as determined in local written agreements pursuant to subdivision (e) of Section 56220.

- Health Facility Definition

(b) For the purposes of this part, "health facility" shall have the definition set forth in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

- Placement Not Educational Program Option

56167.5. Nothing in this article shall be construed to mean that the placement of any individual with exceptional needs in a hospital or health facility constitutes a necessary residential placement, as described under Section 300.302 of Title 34 of the Code of Federal Regulations, for which the district, special education local plan area, or county office would be responsible as an educational program option under this part.

- Nonpublic School

56168. If the hospital or health facility also operates a nonpublic, nonsectarian school and the individual with exceptional needs is served by that nonpublic school, the responsibility for assuring appropriate education of the individual shall be that of the district in which the parent resides, pursuant to Sections 56365 and 56366.

- Apportionment of Funds
- Not Subject to Deficit Provisions

56169. (a) The superintendent shall apportion funds pursuant to Chapter 7 (commencing with Section 56700) to the district or county operating programs under this article. Classes operated pursuant to this article shall not be subject to the deficit provisions prescribed by Article 10 (commencing with Section 56790) of Chapter 7.

- Revenue Limit Computation

(b) Except where the hospital or health facility also operates a nonsectarian, nonpublic school, the revenue limit of the district in which the hospital or health facility is located shall be used for computational purposes.

- Exclusion

56169.5. This article shall not apply to programs operating in state hospitals.

- Severance Clause

56169.7. If any provision of this article, or the application thereof to any person or circumstances, is held invalid by an appellate court of competent jurisdiction, the remainder of the article, and the application of the provision to other persons or circumstances, shall not be affected thereby.

- SCHOOL DISTRICTS

## Article 6. School Districts

- Local Plan Options

56170. The governing board of a school district shall elect to do one of the following:

- Sufficient Size and Scope

(a) If of sufficient size and scope, under standards adopted by the board, submit to the superintendent, in accordance with Section 56200, a local plan for the education of all individuals with exceptional needs residing in the district.

- Multidistricts

(b) In conjunction with one or more districts, submit to the superintendent, in accordance with Section 56200, a local plan for the education of individuals with exceptional needs residing in those districts. The plan shall, through joint powers agreements or other contractual agreements, include all the following:

- Governance Structure

(1) Provision of a governance structure and any necessary administrative support to implement the plan.

- Education Responsibilities

(2) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional

needs residing within the special education local plan area.

- RLA/Administrative Entity

(3) Designation of a responsible local agency or alternative administrative entity to perform such functions as the receipt and distribution of regionalized services funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of the services required by the plan.

- Join with County Office

(c) Join with the county office, to submit to the superintendent a plan in accordance with Section 56200 to assure access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan. The county office shall coordinate the implementation of the plan, unless otherwise specified in the plan. The plan shall, through contractual agreements, include all of the following:

- Education Responsibilities

(1) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing within the geographical area served by the plan.

- RLA/Administrative Entity

(2) Designation of the county office, of a responsible local agency, or of any other administrative entity to perform such functions as the receipt and distribution of regionalized services funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

- SELPA Definition

(d) The service area covered by the local plan developed under subdivision (a), (b), or (c) shall be known as the special education local plan area.

- Contractual Agreements

(e) Nothing in this section shall be construed to limit the authority of any county office and any school district or group of school districts to enter into contractual agreements for services relating to the education of individuals with exceptional needs.

- Developing Local Plan

56171. In developing a local plan under Section 56170, each district shall:

- Involve Teachers/Parents

(a) Involve special and regular teachers selected by their peers and parents selected by their peers in an active role.

- Cooperate in Planning Option

(b) Cooperate with the county office and other school districts in the geographic areas in planning its option under Section 56170 and, commencing with fiscal year 1982-83 and each fiscal year thereafter, notify the county office of its

- Electing Alternative Option

intent to elect an alternative option from those specified in Section 56170, at least one year prior to the proposed effective date of the implementation of such alternative plan.

- Compatible Plan

(c) Cooperate with the county office to assure that the plan is compatible with other local plans in the county and any county plan of a contiguous county.

- Countywide Planning

(d) Join with the county office in countywide planning pursuant to subdivision (a) of Section 56140.

- Submit Plan for Review

(e) Submit to the county office for review any plan developed under subdivision (a), or (b) of Section 56170.

- County Office/District Governing Board Authority Over Programs
- Contracts with Employees

56172. (a) Each county office and district governing board shall have authority over the programs it directly maintains, consistent with the local plan submitted pursuant to Section 56170. In counties with more than one special education local plan area for which the county office provides services, relevant provisions of contracts between the county office and its employees governing wages, hours, and working conditions shall supersede like provisions contained in a plan submitted under Section 56170.

- Pupils Who Reside in Other Districts/Counties

(b) Any county office or district governing board may provide for the education of individual pupils in special education programs maintained by other districts or counties, and may include within their special education programs pupils who reside in other districts or counties. Section 46600 shall apply to interdistrict attendance agreements for programs conducted pursuant to this part.

## Article 7. Community Advisory Committee

- COMMUNITY ADVISORY COMMITTEE

- Advisory Capacity

56190. Each plan submitted under Section 56170 shall establish a community advisory committee. Such committee shall serve only in an advisory capacity.

- CAC Appointments

56191. The members of the community advisory committee shall be appointed by, and responsible to, the governing board of each participating district or county office, or any combination thereof participating in the local plan. Appointment shall be in accordance with a locally determined selection procedure that is described in the local plan. Where appropriate, this procedure shall provide for selection of representatives of groups specified in Section 56192 by their peers. Such procedure shall provide that terms of appointment are for at least two years and are annually staggered to ensure that no more than one half of the membership serves the first year of the term in any one year.

- CAC Composition

56192. The community advisory committee shall be composed of parents of individuals with exceptional needs enrolled in public or private schools, parents of other pupils enrolled in school, handicapped pupils and adults, regular education teachers, special education teachers and other school personnel, representatives of other public and private agencies, and persons concerned with the needs of individuals with exceptional needs.

- Parent Majority

56193. At least the majority of such committee shall be composed of parents of pupils enrolled in schools participating in the local plan, and at least a majority of such parents shall be parents of individuals with exceptional needs.

- CAC Responsibilities

56194. The community advisory committee shall have the authority and fulfill the responsibilities that are defined for it in the local plan. The responsibilities shall include, but need not be limited to, all the following:

(a) Advising the policy and administrative entity of the district, special education local plan area, or county office, regarding the development, amendment, and review of the local plan. The entity shall review and consider comments from the community advisory committee.

(b) Recommending annual priorities to be addressed by the plan.

(c) Assisting in parent education and in recruiting parents and other volunteers who may contribute to the implementation of the plan.

(d) Encouraging community involvement in the development and review of the local plan.

(e) Supporting activities on behalf of individuals with exceptional needs.

(f) Assisting in parent awareness of the importance of regular school attendance.

## CHAPTER 3. ELEMENTS OF THE LOCAL PLAN

- ELEMENTS OF THE LOCAL PLAN

### Article 1. State Requirements

- STATE REQUIREMENTS

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

- Compliance Assurances

(a) Compliance assurances, including general compliance with Public Law 94-142, Section 504 of Public Law 93-112, and the provisions of this part.

- Description of Services

(b) Description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

- Description of Governance/Administration

(c) (1) Description of the governance and administration of the plan.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56170, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

- Policymaking Responsibilities

- Joint Powers/Contractual Agreements

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56170.

- Annual Budget Plan

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and such revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct such a review prior to submission of the plan to the superintendent.

- CAC Review of Plan

(g) Description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

- Description of Program Requirements

(h) A description of the process being utilized to meet the requirements of Section 56303.

- Description of Process Utilized in Considering Regular Education Program

56201. As a part of the local plan submitted pursuant to Section 56200, each special education local plan area shall describe how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve pupils in isolated sites and maximizes the opportunities to serve pupils in the least restrictive environments.

- Specialized Equipment and Services

## Article 2. Local Requirements

- LOCAL REQUIREMENTS

56220. In addition to the provisions required to be included in the local plan pursuant to Section 56200, each special education local plan area that submits a local plan pursuant to subdivision (b) of Section 56170 and each county office that submits a local plan pursuant to subdivision (c) of Section 56170 shall develop written agreements to be entered into by entities participating in the plan. The agreements need not be submitted to the superintendent. These agreements shall include, but not be limited to, the following:

- Written Agreements

(a) A coordinated identification, referral, and placement system pursuant to Chapter 4 (commencing with Section 56300).

- Coordinated IRP System

(b) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

- Procedural Safeguards

(c) Regionalized services to local programs, including, but not limited to, all the following:

- Regionalized Services

(1) Program specialist service pursuant to Section 56368.

(2) Personnel development, including training for staff, parents, and members of the community advisory committee pursuant to Article 3 (commencing with Section 56240).

(3) Evaluation pursuant to Chapter 6 (commencing with Section 56600).

(4) Data collection and development of management information systems.

(5) Curriculum development.

(6) Provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem.

- Coordination with Local Public Agencies

(d) A description of the process for coordinating services with other local public agencies that are funded to serve individuals with exceptional needs.

- Public/Proprietary Hospitals

(e) A description of the process for coordinating and providing services to individuals with exceptional needs placed in public hospitals, proprietary hospitals, and other residential medical facilities pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2.

- Licensed Children's Institutions/Foster Family Homes

(f) A description of the process for coordinating and providing services to individuals with exceptional needs placed in licensed children's institutions and foster family homes pursuant to Article 5 (commencing with Section 56155) of Chapter 2.

- Juvenile Court Schools/ County Community Schools

(g) A description of the process for coordinating and providing services to individuals with exceptional needs placed in juvenile court schools or county community schools pursuant to Section 56150.

- Adopt Policies

56221. (a) Each entity providing special education under this part shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to subdivision (b) or (c) of Section 56170, or Section 56220. The policies need not be submitted to the superintendent.

(b) The policies shall include, but not be limited to, all of the following:

- Nonpublic Services

(1) Nonpublic, nonsectarian services, including those provided pursuant to Sections 56365 and 56366.

- Review of Class Assignment at Teacher's Request

(2) Review, at a regular education or special education teacher's request, of the assignment of an individual with exceptional needs to his or her class and a mandatory meeting of the individualized education program team if the review indicates a change in the pupil's placement, instruction, related services, or any combination thereof. The procedures shall indicate which personnel are responsible for the reviews and a timetable for completion of the review.

- Procedural Safeguards

(3) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

- Resource Specialists

(4) Resource specialists pursuant to Section 56362.

- Transportation

(5) Transportation, where appropriate, which describes how special education transportation is coordinated with regular home-to-school transportation. The policy shall set forth criteria for meeting the transportation needs of special education pupils.

- Caseloads

(6) Caseloads pursuant to Chapter 4.45 (commencing with Section 56440) of Part 30. The policies, with respect to caseloads, shall not be developed until guidelines or proposed regulations are issued pursuant to Section 56441.7. The guidelines or proposed regulations shall be considered when developing the caseload policy. A statement of justification shall be attached if the local caseload policy exceeds state guidelines or proposed regulations.

- Governing Board Members/ Due Process Hearing Procedures

(c) The policies may include, but are not limited to, provisions for involvement of district and county governing board members in any due process hearing procedure activities conducted pursuant to, and consistent with, state and federal law.

- Local Plan Developed/ Updated by Committee

56222. The plan for special education shall be developed and updated cooperatively by a committee of representatives of special and regular teachers and administrators selected by the groups they represent and with input from the community advisory committee to ensure adequate and effective participation and communication.

## Article 3. Staff Development

- STAFF DEVELOPMENT

- Participants

56240. Staff development programs shall be provided for regular and special education teachers, administrators, certificated and classified employees, volunteers, community advisory committee members and, as appropriate, members of the district and county governing boards. The programs shall be coordinated with other staff development programs in the district, special education local plan area, or county office, including school level staff development programs authorized by state and federal law.

56241. Staff development programs shall include, but not be limited to, all the following:

- Opportunities

(a) Provision of opportunities for all school personnel, paraprofessionals, and volunteers to participate in ongoing development activities pursuant to a systematic identification of pupil and personnel needs.

- Design and Implementation

(b) Be designed and implemented by classroom teachers and other participating school personnel, including the school principal. Teachers shall comprise the majority of any group designated to design local staff development programs for instructional personnel to be established pursuant to this part. Positive efforts shall be made to ensure the individuals with exceptional needs and parents of such individuals are involved in the design and implementation of staff development programs.

- Diversity in Development

(c) Allowance for diversity in development activities, including, but not limited to, small groups, self-directed learning, and systematic observation during visits to other classrooms or schools.

- Scheduling

(d) Scheduling of time which is set aside for such purpose throughout the school year, including, but not limited to, time when participating school personnel are released from their regular duties.

- Evaluation/Modification

(e) Evaluation and modification on a continuing basis by participating school personnel with the aid of outside personnel, as necessary.

- Administrators

(f) Inclusion of the school principal and other administrative personnel as active participants in one or more staff development activities implemented pursuant to this chapter.

- Expense Budget

(g) Provision of a budget for reasonable and necessary expenses, relating to staff development programs.

- ADA Reimbursement

56242. (a) A district, special education local plan area, or county office, shall receive its full average daily attendance apportionment during the regular school year to conduct staff development programs pursuant to this article. Except as provided in subdivision (b), the time shall not exceed two days each year for each participating staff member. However, no district, special education local plan area, or county office shall receive average daily attendance reimbursement under this section if it is reimbursed pursuant to Chapter 1147 of the Statutes of 1972, Chapter 3.1 (commencing with Section 44670) of Part 25, or Chapter 6 (commencing with Section 52000) of Part 28.

- Number of Staff Development Days

(b) Whenever a school operates a school-based coordinated program pursuant to Chapter 12 (commencing with Section 52800) of Part 28 and that program includes special education programs and services, staff members teaching in special classes and centers may receive the same number of staff development days as other staff members are receiving at that schoolsite.

56243. It is the intent of the Legislature, pursuant to this article, that each district, special education local plan area, and county office provide regular classroom teachers serving individuals with exceptional needs appropriate training each year relating to the needs of those individuals.

- Regular Classroom Teachers

## CHAPTER 4. IDENTIFICATION AND REFERRAL, ASSESSMENT, INSTRUCTIONAL PLANNING, IMPLEMENTATION, AND REVIEW

- IDENTIFICATION/REFERRAL

### Article 1. Identification and Referral

- Systematically Seek Out

56300. Each district, special education local plan area, or county office shall actively and systematically seek out all individuals with exceptional needs, ages 0 through 21 years, including children not enrolled in public school programs, who reside in the district or are under the jurisdiction of a special education local plan area or a county office.

- Continuous Child-Find

56301. Each district, special education local plan area, or county office shall establish written policies and procedures for a continuous child-find system which addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs.

- Identification Procedures

56302. Each district, special education local plan area, or county office shall provide for the identification and assessment of an individual's exceptional needs, and the planning of an instructional program to best meet the assessed needs. Identification procedures shall include systematic methods of utilizing referrals of pupils from teachers, parents, agencies, appropriate professional persons, and from other members of the public. Identification procedures shall be coordinated with school site procedures for referral of pupils with needs that cannot be met with modification of the regular instructional program.

- Consider Regular Education Program Resources

56303. A pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized.

### Article 2. Assessment

- ASSESSMENT

- Individual Assessment Conducted by Qualified Persons

56320. Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all the following:

(a) Testing and assessment materials and procedures used for the purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory.

- Testing/Assessment Materials

(b) Tests and other assessment materials meet all the following requirements:

(1) Are provided and administered in the pupil's primary language or other mode of communication, unless the assessment plan indicates reasons why such provision and administration are not clearly feasible.

- Provided in Primary Language

(2) Have been validated for the specific purpose for which they are used.

- Validated for Specific Purpose

(3) Are administered by trained personnel in conformance with the instructions provided by the producer of such tests and other assessment materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a psychometrist or credentialed school psychologist where available. It is not the intent of the Legislature to require that new personnel be hired for this purpose.

- Administered by Trained Personnel

(c) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

- Specific Areas

(d) Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

- Accurate Test Results

(e) No single procedure is used as the sole criterion for determining an appropriate educational program for an individual with exceptional needs.

- No Single Procedure Used

(f) The pupil is assessed in all areas related to the suspected disability including, where appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and

- Assessed in All Areas

interests, and social and emotional status. A developmental history is obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136.

- Low Vision Assessment

(g) The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment consistent with guidelines established pursuant to Section 56136.

- Assessment Conducted by Persons Knowledgeable of Disability
- Unique Educational Needs

56321. (a) Whenever an assessment for the development or revision of the individualized education program is to be conducted, the parent of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment. A copy of the notice of parent rights shall be attached to the assessment plan.

- Proposed Assessment Plan
- Notice of Parent Rights

(b) The proposed assessment plan given to parents shall meet all the following requirements:

- Requirements

(1) Be in language easily understood by the general public.

(2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible.

(3) Explain the types of assessments to be conducted.

(4) State that no individualized education program will result from the assessment without the consent of the parent.

(c) No assessment shall be conducted unless the written consent of the parent is obtained prior to the assessment except pursuant to subdivision (e) of Section 56506. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of such consent.

- Written Consent of Parent

56322. The assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area.

- Assessment Conducted by Competent Persons

56323. Admission of a pupil to special education instruction shall be made only in accordance with this article, Article 2.5 (commencing with Section 56333) and standards established by the board and upon a recommendation by the individualized education program team.

- Admission to Special Education

- Psychological Assessment

56324. (a) Any psychological assessment of pupils shall be made in accordance with Section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed.

- Health Assessment

(b) Any health assessment of pupils shall be made in accordance with Section 56320 and shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed.

- Pupil Transfers

56325. (a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part may place the pupil in a comparable program for a period not to exceed 30 days. This interim placement may be made without complying with subdivision (a) of Section 56321.

- Interim Placement Not to Exceed 30 Days
- IEP Team Review/Final Recommendation

(b) Before the expiration of the 30-day period, the interim placement shall be reviewed by the individualized education program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred.

- Assessment Referral to State Schools

56326. A pupil may be referred, as appropriate, for further assessment and recommendations to the California Schools for the Deaf and Blind or the Diagnostic Schools for Neurologically Handicapped Children.

- Written Assessment Report

56327. The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following:

(a) Whether the pupil may need special education and related services.

(b) The basis for making the determination.

(c) The relevant behavior noted during the observation of the pupil in an appropriate setting.

(d) The relationship of that behavior to the pupil's academic and social functioning.

(e) The educationally relevant health and development, and medical findings, if any.

(f) For pupils with learning disabilities whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.

(g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.

(h) The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56136.

- School Site/Regional Level Assessment Options

56328. Notwithstanding the provisions of this chapter, a district, special education local plan area, or county office may utilize a school site level and a regional level service, as provided for under Section 56336.2 as it read immediately prior to the operative date of this section, to provide the services required by this chapter.

- Written Notice Provided to Parent

56329. The parent of the pupil shall be provided with written notice that he or she may obtain, upon request, a copy of the findings of the assessment or assessments conducted pursuant to Section 56321. This notice may be provided as part of the assessment plan given to parents pursuant to Section 56321. The notice shall include all the following:

- IEP Team Conference

(a) An individualized education program team conference, including the parent and his or her representatives, shall be scheduled, pursuant to Section 56341, to discuss the assessment, the educational recommendations, and the reasons for these recommendations.

- Independent Educational Assessment

(b) A parent has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent disagrees with an assessment obtained by the public education agency.

- Due Process Hearing on Assessment

However, the public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent still has the right for an independent educational assessment, but not at public expense.

- Results of Independent Assessment

If the parent obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding such child.

## Article 2.5. Eligibility Criteria for Special Education and Related Services on the Basis of Language and Speech Disorder or Specific Learning Disabilities

- ELIGIBILITY CRITERIA

- Language/Speech Disorder Eligibility Criteria

56333. A pupil shall be assessed as having a language or speech disorder which makes him or her eligible for special education and related services when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. In order to be eligible for special education and related services, difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist who determines that such difficulty results from any of the following disorders:

(a) Articulation disorders, such that the pupil's production of speech significantly interferes with communication and attracts adverse attention.

(b) Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.

(c) Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener.

(d) Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil's language performance level is found to be significantly below the language performance level of his or her peers.

(e) Hearing loss which results in a language or speech disorder and significantly affects educational performance.

- Specific Learning Disability Eligibility Criteria

56337. A pupil shall be assessed as having a specific learning disability which makes him or her eligible for special education and related services when it is determined that all of the following exist:

(a) A severe discrepancy exists between the intellectual ability and achievements in one or more of the following academic areas:

(1) Oral expression.
(2) Listening comprehension.
(3) Written expression.
(4) Basic reading skills.

(5) Reading comprehension.
(6) Mathematics calculation.
(7) Mathematics reasoning.

(b) The discrepancy is due to a disorder in one or more of the basic psychological processes and is not the result of environmental, cultural, or economic disadvantages.

(c) The discrepancy cannot be corrected through other regular or categorical services offered within the regular instructional program.

- Visual Perceptual/Visual Motor Dysfunction

56338. As used in Section 56337, "specific learning disability" includes, but is not limited to, disability within the function of vision which results in visual perceptual or visual motor dysfunction.

- INSTRUCTIONAL PLANNING/IEP

## Article 3. Instructional Planning and Individualized Education Program

- Initiate and Conduct Meetings

56340. Each district, special education local plan area, or county office shall initiate and conduct meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs.

- IEP Team

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

- IEP Team Members

(b) The individualized education program team shall include all of the following:

(1) A representative other than the pupil's teacher designated by administration who may be an administrator, program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education.

(2) The pupil's present teacher. If the pupil does not presently have a teacher, this representative shall be the teacher with the most recent and complete knowledge of the pupil who has also observed the pupil's educational performance in an appropriate setting. If no such teacher is available, this representative shall be a regular classroom teacher referring the pupil, or a special education teacher qualified to teach a pupil of his or her age.

(3) One or both of the pupil's parents, a representative selected by the parent, or both, pursuant to Public Law 94-142.

(c) When appropriate, the team shall also include:

(1) The individual with exceptional needs.

(2) Other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individualized education program.

- Assessment Person Present at Meeting

(d) If the team is developing, reviewing, or revising the individualized education program of an individual with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement.

- Observation of Educational Performance

(e) For pupils with suspected learning disabilities, at least one member of the individualized education program team, other than the pupil's regular teacher, shall be a person who has observed the pupil's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member shall observe the child in an environment appropriate for a child of that age.

- Right of Parent to Present Information

(f) The parent shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program planning.

- Nonadversarial IEP Meetings/ Attorney Use

(g) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs. However, if the public education agency uses an attorney during any part of the individualized education program meeting, that use shall be governed by the provisions of Section 56507.

- IEP Team Responsibilities

56342. The individualized education program team shall review the assessment results, determine eligibility, determine the content of the individualized education program, consider local transportation policies and criteria developed pursuant to paragraph (5) of subdivision (b) of Section 56221, and make program placement recommendations.

Prior to recommending a new placement in a nonpublic, nonsectarian school, the individualized education program team shall submit the proposed recommendation to the local governing board of the district, special education local plan area, or county office for its review and recommendation regarding the cost of such placement.

- Local Governing Board Reviews Nonpublic School Recommendations

The local governing board shall complete its review and make its recommendations, if any, at the next regular meeting of the board. A parent or representative shall have the right to appear before the board and submit written and oral evidence regarding the need for nonpublic school placement for his or her child. Any recommendations of the board shall be considered at an individualized education program team meeting, to be held within five days of the board's review.

- Right of Parent to Appear Before Board

Notwithstanding Section 56344, the time limit for the development of an individualized education program shall be waived for a period not to exceed 15 additional days to permit the local governing board to meet its review and recommendation requirements.

- IEP Development Time Waiver

56343. An individualized education program team shall meet whenever any of the following occurs:

- IEP Team Meetings Required

(a) A pupil has received an initial formal assessment. The team may meet when a pupil receives any subsequent formal assessment.

(b) The pupil demonstrates a lack of anticipated progress.

(c) The parent or teacher requests a meeting to develop, review, or revise the individualized education program; provided that such a request by a parent shall not be granted more than twice in any one semester.

(d) At least annually, to review the pupil's progress, the individualized education program, and the appropriateness of placement, and to make any necessary revisions. The individualized education program team conducting the annual review shall consist of those persons specified in subdivision (b) of Section 56341. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review.

56343.5. A meeting of an individualized education program team requested by a parent to review an individualized education program pursuant

- Parent Request for IEP Review

to subdivision (c) of Section 56343 shall be held within 30 days, not counting days in July and August, from the date of receipt of the parent's written request. If a parent makes an oral request, the school district shall notify the parent of the need for a written request and the procedure for filing a written request.

- IEP Development Time Line

56344. An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 days, not counting days between school sessions or terms days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, such an individualized education program shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 20 days or less prior to the end of the regular school year.

- IEP Contents

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance.

(2) The annual goals, including short-term instructional objectives.

(3) The specific special educational instruction and related services required by the pupil.

(4) The extent to which the pupil will be able to participate in regular educational programs.

(5) The projected date for initiation and the anticipated duration of such programs and services.

(6) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

- Appropriate Additional IEP Content

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

- Prevocational Career Education

(1) Prevocational career education for pupils in kindergarten and grades 1 to 6, inclusive, or pupils of comparable chronological age.

- Vocational Education/ Career Development

(2) Vocational education, career education or work experience education, or any combination thereof, in preparation for remunerative employment, including independent living skill training for pupils in grades 7 to 12, inclusive,

or comparable chronological age, who require differential proficiency standards pursuant to Section 51215.

- Prescribed Course of Study

(3) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation in accordance with Section 51215.

- Linguistic Goals

(4) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

- Extended School Year Services

(5) Extended school year services when needed, as determined by the individualized education program team.

- Transition into Regular Program

(6) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday.

- Specialized Services, Materials, and Equipment

(7) For pupils with low incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

- Responsibility for Providing Services

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education local plan area, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program.

- Differential Proficency Standards

(d) Pursuant to subdivision (d) of Section 51215, a pupil's individualized education program shall also include the determination of the individualized education program team as to whether differential proficiency standards shall be developed for the pupil. If differential proficiency standards are to be developed, the individualized education program shall include these standards.

- Health Care Services Exclusion

56345.5. Except as prescribed in subdivision (b) of Section 56324, nothing in this part shall be construed to authorize districts, special education local plan areas, or county offices to prescribe health care services.

- Parent Written Consent for IEP Contents

56346. No pupil shall be required to participate in all or part of any special education program unless the parent is first informed, in writing, of the facts which make participation in the program necessary or desirable, and of the contents of the individualized education plan, and after such notice, consents, in writing, to all or part of the individualized education program. If the parent does not consent to all the components of the individualized education program, then those components of the program to which the parent has consented may be implemented so as not to delay providing instruction and services to the pupil. Components to which the parent has not consented may become the basis for a due process hearing pursuant to Chapter 5 (commencing with Section 56500). The parent may withdraw consent at any time after consultation with a member of the individualized education program team and after he or she has submitted written notification to an administrator.

- If Parent Does Not Consent
- Parent May Withdraw Consent

56347. Each district, special education local plan area, or county office shall, prior to the placement of the individual with exceptional needs, ensure that the regular teacher or teachers, the special education teacher or teachers, and other persons who provide special education, related services, or both to the individual with exceptional needs shall be knowledgeable of the content of the individualized education program. A copy of each individualized education program shall be maintained at each school site where the pupil is enrolled. Service providers from other agencies who provide instruction or a related service to the individual off the school site shall be provided a copy of the individualized education program. All individualized education programs shall be maintained in accordance with state and federal pupil record confidentiality laws.

- Be Knowledgeable of Content

## Article 4. Implementation

- IMPLEMENTATION

56360. Each district, special education local plan area, or county office shall ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services.

- Ensure Continuum of Program Options

56361. The continuum of program options shall include all of the following:

- List of Program Options

(a) A resource specialist program pursuant to Section 56362.

(b) Designated instruction and services pursuant to Section 56363.

(c) Special classes and centers pursuant to Section 56364.

(d) Nonpublic, nonsectarian school services pursuant to Section 56365.

(e) State special schools pursuant to Section 56367.

- Infant Programs

56361.2. All special education and related services for any individual with exceptional needs who is younger than three years of age shall be provided pursuant to Chapter 4.4 (commencing with Section 56425).

- Contracting with Hospitals for DIS

56361.5. (a) In addition to the continuum of program options listed in Section 56361, a district, special education local plan area, or county office may contract with a hospital to provide designated instruction and services, as defined in subdivision (b) of Section 56363, required by the individual with exceptional needs, as specified in the individualized education program. However, a district, special education local plan area, or county office of education may not contract with a sectarian hospital for instructional services. A district, special education local plan area, or county office shall contract with a hospital for designated instruction and services required by the individual with exceptional needs only when no appropriate public education program is available.

- Sectarian Limitations

- No Public Program Available

- Definition of Hospital

For the purposes of this section "hospital" means a health care facility licensed by the State Department of Health Services.

- Contract Procedures

(b) Contracts with hospitals pursuant to subdivision (a) shall be subject to the procedures prescribed in Sections 56365, 56366, and 56366.5.

- Resource Specialist Duties

56362. (a) The resource specialist program shall provide, but not be limited to, all of the following:

(1) Provision for a resource specialist or specialists who shall provide instruction and services for those pupils whose needs have been identified in an individualized education program developed by the individualized education program team and who are assigned to regular classroom teachers for a majority of a schoolday.

(2) Provision of information and assistance to individuals with exceptional needs and their parents.

(3) Provision of consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members.

(4) Coordination of special education services with the regular school programs for each individual with exceptional needs enrolled in the resource specialist program.

(5) Monitoring of pupil progress on a regular basis, participation in the review and revision of individualized education programs, as appropriate, and referral of pupils who do not demonstrate appropriate progress to the individualized education program team.

(6) Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

- Resource Specialist Qualifications

(b) The resource specialist program shall be under the direction of a resource specialist who is a credentialed special education teacher, or who has a clinical services credential with a special class authorization, who has had three or more years of teaching experience, including both regular and special education teaching experience, as defined by rules and regulations of the Commission on Teacher Credentialing and who has demonstrated the competencies for a resource specialist, as established by the Commission on Teacher Credentialing.

- Caseloads

(c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56221 and in accordance with regulations established by the board. No resource specialist shall have a caseload which exceeds 28 pupils.

- Shall Not Teach Regular Classes

(d) Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes.

- Prior Approval for Majority of School Day

(e) Resource specialists shall not enroll a pupil for a majority of a schoolday without prior approval by the superintendent.

- Eighty Percent Mandate

(f) At least eighty percent of the resource specialists within a local plan shall be provided with an instructional aide.

- Caseload Definition

56362.1. For the purposes of Section 56362, "caseload" shall include, but not be limited to, all pupils for whom the resource specialist performs any of the services described in subdivision (a) of Section 56362.

- Certificate of Competence Provisions

56362.5. By July 1982, the Commission on Teacher Credentialing shall adopt rules and regulations for a resource specialist certificate of competence. The certificate shall provide all the following:

(a) Definition of the competencies required of a resource specialist.

- Direct Application

(b) Provision for a system of direct application to the commission for a certificate of competence for each teacher who holds a valid special education credential, other than an emergency credential, and who satisfies any one of the following criteria:

(1) Provided instruction and services as specified in subdivision (a) of Section 80070.1 of Title 5 of the California Administrative Code as it read immediately prior to July 28, 1980, for two years prior to September 1, 1981.

(2) Provided instruction and services as specified in subdivision (b) of Section 80070.2 of Title 5 of the California Administrative Code as it read immediately prior to July 28, 1980, for two years prior to June 30, 1983.

- Preliminary Nonrenewable Certificate

(c) Provision for the issuance, for up to three years, of a preliminary nonrenewable certificate of competence for the resource specialist, and adoption of the standards for the issuance and continuing validity of such a certificate.

- System of Verification

(d) Establishment of a system for verification of competencies through both of the following:

(1) Commission on Teacher Credentialing approved institution of higher education resource specialist certificate program.

(2) Commission on Teacher Credentialing approved competency assessment panels for resource specialist certification.

- Cooperation with Department of Education

(e) Cooperation with the department in implementing these provisions.

- Issuance of Certificate Without Additional Fee

Notwithstanding any other provision of law, any person who held a preliminary resource specialist certificate of competence on January 28, 1982, and who met the requirements for a clear resource specialist certificate of competence as specified in paragraph (1) of subdivision (b) may be issued a clear resource specialist certificate of competence upon submission of a completed application, but without any additional fee.

- Bilingual-Crosscultural Certificate of Assessment Competence

56362.7. (a) The Legislature recognizes the need for specially trained professionals to assess and serve pupils of limited-English proficiency. This is particularly true of pupils with exceptional needs or pupils with suspected handicaps.

- Written and Oral Exam

(b) The commission shall develop a bilingual-crosscultural certificate of assessment competence for those professionals who may participate in assessments for placements in special education programs. The certificate shall be issued to holders of appropriate credentials, certificates, or authorizations who demonstrate, by written and oral examination, all of the following:

(1) That the person is competent in both the oral and written skills of a language other than English.

(2) That the person has both the knowledge and understanding of the cultural and historical

heritage of the limited-English-proficient individuals to be served.

(3) That the person has the ability to perform the assessment functions the candidate is certified or authorized to perform in English and in a language other than English.

(4) That the person has knowledge of the use of instruments and other assessment techniques appropriate to evaluate limited-English-proficient individuals with exceptional needs and ability to develop appropriate data, instructional strategies, individual educational plans, and evaluations.

- Certificates for Implementers

(c) Certificates of bilingual-crosscultural competence for special education professionals who implement individual education plans requiring bilingual services shall be granted by the commission pursuant to Section 44253.7.

- Not State-Mandated for Employment

(d) It is not the intent of the Legislature in enacting this section that possession of any certificate established by this section be a state-mandated requirement for employment or continued employment. It is the intent that this is a matter for local educational agencies to determine.

- Designated Instruction and Services (DIS)

56363. (a) Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services. Designated instruction and services shall meet standards adopted by the board.

- Providers

- DIS Services

(b) These services may include, but are not limited to, the following:

(1) Language and speech development and remediation.
(2) Audiological services.
(3) Orientation and mobility instruction.
(4) Instruction in the home or hospital.
(5) Adapted physical education.
(6) Physical and occupational therapy.
(7) Vision services.
(8) Specialized driver training instruction.
(9) Counseling and guidance.

(10) Psychological services other than assessment and development of the individualized education program.

(11) Parent counseling and training.

(12) Health and nursing services.

(13) Social worker services.

(14) Specially designed vocational education and career development.

(15) Recreation services.

(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing services.

- Caseload for Language, Speech, and Hearing Specialists

56363.3. The average caseload for language, speech, and hearing specialists in districts, county offices, or special education local plan areas shall not exceed 55 cases, unless the local comprehensive plan specifies a higher average caseload and the reasons for the greater average caseload.

- Reimbursement from Insurance Companies

56363.5. School districts, county offices of education, and special education local plan areas may seek, either directly or through the pupil's parents, reimbursement from insurance companies to cover the costs of related services to the extent permitted by federal law or regulation.

- Special Classes and Centers

56364. Special classes and centers which enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll the pupils when the nature or severity of the disability precludes their participation in the regular school program for a majority of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

- Participate with Nonhandicapped Pupils

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals and recess periods, each public agency shall ensure that each individual with exceptional needs participates in those services and activities with nonhandicapped pupils to the maximum extent appropriate to the needs of the individual with exceptional needs. Special classes and centers shall meet standards adopted by the board.

- Special Classes for Pupils with Low-Incidence Disabilities

56364.1. Notwithstanding the provisions of Section 56364, pupils with low incidence disabilities may receive all or a portion of their instruction in the regular classroom and may also be enrolled in special classes taught by appropriately credentialed teachers who serve these pupils at one or more school sites. The instruction shall be provided in a manner which is consistent with the guidelines adopted pursuant to Section 56136 and in accordance with the individualized education program.

56364.5. The Commission on Teacher Credentialing shall establish standards for the issuance of credentials or permits for persons employed in special centers pursuant to Section 56364.

- Credentials/Permits for Special Centers' Personnel

56365. (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. The services shall be provided under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities or services required by the individual with exceptional needs when no appropriate public education program is available.

- Nonpublic, Nonsectarian Schools/Agencies

- No Public Program Available

(b) Pupils enrolled in nonpublic, nonsectarian schools under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for services that are provided to individuals with exceptional needs pursuant to the contract.

- Deemed Enrolled in Public Schools

- Funding Eligibility

(c) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to such contract.

- Full Amount of Tuition

(d) Before contracting with a nonpublic, nonsectarian school outside of the State of California, every effort shall be made by the district, special education local plan area, or county office to utilize public schools, or to locate an appropriate nonpublic, nonsectarian school program within the state.

- Before Contracting Outside of California

56365.5. Before state funds can be used for new public and nonpublic school special education placements of individuals with exceptional needs, the superintendent shall review the appropriateness of the placement if the cost of the placement exceeds twenty thousand dollars ($20,000).

- State Superintendent's Review of Placements Exceeding $20,000

The district, special education local plan area, or county office shall submit documentation to the superintendent of all efforts made to locate an

- Documentation

appropriate alternative placement within the state and outside of the state.

- Review Placement Decision

The superintendent or his or her designee shall review the educational placement decision to determine if every effort was made by the district, special education local plan area, or county office to utilize an appropriate public or nonpublic, nonsectarian school costing less than twenty thousand dollars ($20,000).

- Notification of Findings

The superintendent shall notify the district, special education local plan area, or county office of his or her findings within 10 days.

- Annual Percentage Increase

The twenty thousand dollars ($20,000) threshold shall be cumulatively increased by the annual percentage increase specified by Section 56723, or by the in-lieu percentage specified in the Budget Act.

- IEP Team Considers Findings

Within five days following receipt of the superintendent's findings indicating availability of alternative placements, an individualized education program team meeting shall be convened to consider those findings.

- Failure to Make Findings

If the superintendent fails to make findings within 10 days, the original placement decision of the individualized education program team shall be final.

- Report Annual Total Costs

The superintendent shall annually report the total costs incurred by districts, special education local plan areas, county offices, and the state resulting from placements made pursuant to this section.

- Role of Nonpublic School

56366. It is the intent of the Legislature that the role of the nonpublic, nonsectarian school shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, and county offices, and parents.

- Contracting Provisions

(a) The contract for nonpublic, nonsectarian school services shall be developed in accordance with the following provisions:

- Administrative/Financial Agreements

(1) The contract shall specify the administrative and financial agreements between the nonpublic, nonsectarian school and the district, special education local plan area, or county office to provide the services included in the pupil's individualized education program. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

- Length of Time

(2) The contract shall be negotiated for the length of time for which nonpublic, nonsectarian school services are specified in the pupil's individualized education program.

Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract the parent; nonpublic, nonsectarian school; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the contract that do not alter the educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school and the district, special education local plan area, or county office.

- May Terminate for Cause

(3) The contract may be terminated for cause. Such cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

- Provide Specified Services

(4) The nonpublic, nonsectarian school shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school and the district, special education local plan area, or county office agree otherwise in the contract.

- Issuance of Warrant

(b) (1) If the pupil is enrolled in the nonpublic, nonsectarian school with the approval of the district, special education local plan area, or county office prior to agreement to a contract, the district, special education local plan area, or county office shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

- Appeal

- Mediate Formulation of Contract

(2) If after 60 days the contract has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this

appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

- Certification of Standards

(c) No contract for special education and related services provided by nonpublic, nonsectarian schools or licensed children's institutions shall be authorized under this part unless the school or institution has been certified as meeting those standards relating to the required special education services and facilities for individuals with exceptional needs. The certification shall result in the school's or institution's receiving approval to educate pupils under this part for a period no longer than five years from the date of such approval. The procedures, methods, and areas of certification shall be established by rules and regulations issued by the board. The school or institution shall be charged a reasonable sum for this certification. In addition to those standards adopted by the board, the school or institution shall meet all applicable standards relating to fire, health, sanitation, and building safety.

- Waiver of Contract/ Certification Provisions

56366.1. A district, special education local plan area, county office, nonpublic, nonsectarian school, nonpublic, nonsectarian agency, or licensed children's institution may petition the superintendent to waive one or more of the requirements under Sections 56365 and 56366. The petition shall state the reasons for the request, and shall include sufficient documentation to demonstrate that the waiver is necessary or beneficial to the content and implementation of the pupil's individualized education program and that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area, or county office with Public Law 94-142, as amended, Section 504 of Public Law 93-112, as amended, and federal regulations relating thereto.

- Payment for Services

56366.5. (a) Upon receipt of a request from a nonpublic, nonsectarian school for payment for services provided under a contract entered into pursuant to Sections 56365 and 56366, the district, special education local plan area, or county office shall either (1) send a warrant for the amount requested within 45 days, or (2) notify the nonpublic, nonsectarian school within 10 working days of any reason why the requested payment shall not be paid.

(b) If the district, special education local plan area, or county office fails to comply with subdivision (a), the nonpublic, nonsectarian school may require the district, special education local plan area, or county office to pay an additional amount of 1-1/2 percent of the unpaid balance per month until full payment is made. The district, special education local plan area, or county office may not claim reimbursement from the state for such additional amount pursuant to any provision of law, including any provision contained in Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code.

- Penalty for Late Payment

56367. (a) Placements in state special schools pursuant to Sections 59020, 59120, and 59220 shall be made only as a result of recommendations from the individualized education program team, upon a finding that no appropriate placement is available in the local plan area.

- State Special Schools Placements

(b) Notwithstanding the provisions of subdivision (a), referrals for further assessment and recommendations to the California Schools for the Deaf and Blind or the Diagnostic Schools for Neurologically Handicapped Children, pursuant to Section 56326, shall not constitute placements in state special schools.

- Referrals for Further Assessment

56368. (a) A program specialist is a specialist who holds a valid special education credential, clinical services credential, health services credential, or a school psychologist authorization and has advanced training and related experience in the education of individuals with exceptional needs and a specialized indepth knowledge in preschool handicapped, career vocational development, or one or more areas of major handicapping conditions.

- Program Specialist Qualifications

(b) A program specialist may do all the following:

(1) Observe, consult with, and assist resource specialists, designated instruction and services instructors, and special class teachers.

- Program Specialist Activities

(2) Plan programs, coordinate curricular resources, and evaluate effectiveness of programs for individuals with exceptional needs.

(3) Participate in each school's staff development, program development, and innovation of special methods and approaches.

(4) Provide coordination, consultation and program development primarily in one specialized area or areas of his or her expertise.

(5) Be responsible for assuring that pupils have full educational opportunity regardless of the district of residence.

- Considered as Pupil Services Employee

(c) For purposes of Section 41403, a program specialist shall be considered a pupil services employee, as defined in subdivision (c) of Section 41401.

- Contracting with Another Public Agency

56369. A district, special education local plan area, or county office, may contract with another public agency to provide special education or related services to an individual with exceptional needs.

## Article 5. Review

- REVIEW

- At Least Annual Basis

56380. (a) The district, special education local plan area, or county office shall maintain procedures for conducting, on at least an annual basis, reviews of all individualized education programs. The procedures shall provide for the review of the pupil's progress and the appropriateness of placement, and the making of any necessary revisions.

- Parent Notification

(b) The district, special education local plan area, or county office shall notify, in writing, parents of their right to request a review by the individualized education program team. The notice may be part of the individualized education program.

- Conducting IEP Review

(c) Each individualized education program review shall be conducted in accordance with the notice and scheduling requirements for the initial assessment.

- Reassessment

56381. A reassessment of the pupil, based upon procedures specified in Article 2 (commencing with Section 56320) shall be conducted at least every three years or more frequently, if conditions warrant, or if the pupil's parent or teacher requests a new assessment and a new individualized education program to be developed.

If the reassessment so indicates, a new individualized education program shall be developed.

## CHAPTER 4.3. DEMONSTRATION PROGRAMS

- DEMONSTRATION PROGRAMS

- Application

56400. Any special education local plan area may submit an application to the State Department of Education to operate a demonstration program for individuals with exceptional needs. Demonstration programs shall demonstrate creative methods of improving instruction, motivation, and achievement of individuals with exceptional needs by bringing together available resources, including, but not limited to, local districts, special education local plan areas, county offices, the State Department of Education, public agencies and private agencies. The total financial requirement of the demonstration program may not exceed the state entitlement which would otherwise be available.

- Criteria

The State Department of Education shall develop criteria for demonstration programs. The criteria shall be reviewed by the Advisory Commission on Special Education and approved by the State Board of Education. The special education local plan area shall include the criteria in its demonstration program application.

- Enhance Instructional Programs

The goal of demonstration programs is to enhance instructional programs for individuals with exceptional needs. The program shall be under the direction of a qualified special education teacher, and the application to the state shall be reviewed by the special education local plan area community advisory committee and the bargaining unit for the certificated employees of the school district or county office that will conduct the demonstration program, and approved by the local board prior to submission. The State Department of Education may approve the initial application for a two-year period, and may renew the approval only if the department's evaluation of the demonstration program shows that there is evidence that the objectives of the program, as stated in the application are being achieved.

## CHAPTER 4.4. EARLY EDUCATION FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS

- EARLY EDUCATION

- Infant Program Mandate

56425. As a condition of receiving state aid pursuant to this part, each district, special education local plan area, or county office that operated early education programs for individuals with exceptional needs younger than three years of age, as defined in Section 56026, and that received state or federal aid for special education for those programs in the 1980-81 fiscal year, shall continue to operate early education programs in the 1981-82 fiscal year and each fiscal year thereafter.

If a district or county office offered those programs in the 1980-81 fiscal year but in a subsequent year transfers the programs to another district or county office in the special education local plan area, the district or county shall be exempt from the provisions of this section in any year when the programs are offered by the district or county office to which they were transferred.

- Program Transfer

- Funding

A district, special education local plan area, or county office that is required to offer a program pursuant to this section shall be eligible for funding pursuant to Chapter 7 (commencing with Section 56700) of Part 30.

- Legislative Findings, Declarations, and Intent

56425.5. The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs, which provide educational services with active parent involvement, can significantly reduce the potential impact of many handicapping conditions, and positively influence later development when the child reaches school age.

Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the Legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in family involvement activities pursuant to Sections 56426.1 and 56426.4. It is the intent of the Legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services.

It is further the intent of the Legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

- Purpose and Focus

56426. An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities. Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall include, as program options, home-based services pursuant to Section 56426.1, and home-based and group services pursuant to Section 56426.2.

- Program Options

- Home-Based Services

56426.1. (a) Home-based early education services funded pursuant to Sections 56427, 56428, and 56728.8 shall include, but not be limited to, all of the following:

(1) Observing the infant's behavior and development in his or her natural environment.

(2) Presenting activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized education program and to ensure that they do not conflict with his or her medical needs.

(3) Modeling and demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent.

(4) Interacting with the family members and other caregivers, as designated by the parent, to enhance and reinforce their development of skills necessary to promote the infant's development.

(5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs.

(6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.

(b) The frequency of home-based services shall be once or twice a week, depending on the needs of the infant and the family.

- Home Visits and Group Services

56426.2. (a) Early education services funded pursuant to Sections 56427, 56428, and 56728.8

shall be provided both through home visits and group settings with other infants, with or without the parent. Home-based and group services shall include, but not be limited to, all of the following:

(1) All services identified in subdivision (a) of Section 56426.1.

(2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized education program and to ensure that they do not conflict with his or her medical needs.

(3) Opportunities for infants to socialize and participate in play and exploration activities.

(4) Transdisciplinary services by therapists, psychologists, and other specialists as appropriate.

(5) Access to various developmentally appropriate equipment and specialized materials.

(6) Opportunities for family involvement activities, including parent education and parent support groups.

(b) Services provided in a center under this chapter shall not include child care or respite care.

(c) The frequency of group services shall not exceed three hours a day for up to, and including, three days a week, and shall be determined on the basis of the needs of the infant and the family.

(d) The frequency of home visits provided in conjunction with group services shall range from one to eight visits per month, depending on the needs of the infant and the family.

(e) Group services shall be provided on a ratio of no more than four infants to one adult.

(f) Parent participation in group services shall be encouraged.

- Maximum Service Levels

56426.25. The maximum service levels set forth in Sections 56426.1 and 56426.2 apply only for purposes of the allocation of funds for early education programs pursuant to Sections 56427, 56428, and 56728.8, and may be exceeded by a district, special education local plan area, or county office, in accordance with the infants' individualized education programs, provided that no change in the level of entitlement to state funding under this part thereby results.

- Related Services

56426.3. In addition to home-based or home-based and group early education services, related services as defined in Section 300.13 of Title 34 of the Code of Federal Regulations, as that section read on April 1, 1986, shall be available to infants and their families. Related services may be provided in the home or at the center according to needs of the infant and the family.

- Family Involvement Activities

56426.4. (a) Family involvement activities funded pursuant to Sections 56427, 56428, and 56728.8 shall support family members in meeting the practical and emotional issues and needs of raising their infant. These activities may include, but are not limited to, the following:

(1) Educational programs that present information or demonstrate techniques to assist the family to promote their infant's development.

(2) Parent education and training to assist families in understanding, planning for, and meeting the unique needs of their infant.

(3) Parent support groups to share similar experiences and possible solutions.

(4) Instruction in making toys and other materials appropriate to their infant's exceptional needs and development.

(b) The frequency of family involvement activities shall be at least once a month.

(c) Participation by families in family involvement activities shall be voluntary.

- Parental Choice

56426.5. If the individualized education program team determines home-based and group early education services to be appropriate, but the parent chooses not to receive home-based services, group services shall be made available to the infant. Similarly, the choice not to participate in family involvement activities shall not limit the availability to the infant and his or her family of home-based services or home-based and group services as determined appropriate by the individualized education program team.

- Services Provided Through Transdisciplinary Team

56426.6. (a) Early education services shall be provided by the district, special education local plan area, or county office through a transdisciplinary team consisting of a group of professionals from various disciplines and parents who shall share their expertise and otherwise work together to provide these services for infants and their families. Each team member shall be responsible for providing and coordinating early education services for one or more infants and their families, and shall serve as a consultant to other team members and as a provider of appropriate related services to other infants in the program.

- Provision of Services for Vision and Hearing Impairments

(b) Credentialed personnel with expertise in vision or hearing impairments shall be made available by the district, special education local plan area, or county office to early education programs serving infants identified in accordance with subdivision (a), (b), or (d) of Section 3030 of Title 5 of the California Administrative Code, and shall be the primary providers of services under those programs whenever possible.

- Composition of Transdisciplinary Teams

(c) Transdisciplinary teams may include, but need not be limited to, qualified persons from the following disciplines:

(1) Early childhood special education.

(2) Speech and language therapy.

(3) Nursing, with a skill level not less than that of a registered nurse.

(4) Social work, psychology, or mental health.

- OT/PT Consultation Services

(d) School districts, special education local plan areas, and county offices may include, as part of the transdisciplinary team, occupational therapist and physical therapist consultants who provide professional consultation to early education program personnel. Those consultation services may include, but are not limited to, the following:

(1) Positioning, feeding, and the neurological system and its impact on learning.

(2) Adaptive equipment.

(3) Possible limitations in movement, strength, and endurance.

(4) Appropriate handling techniques.

This subdivision shall not be construed to permit occupational therapist and physical therapist consultants to provide direct therapy services to infants, except in accordance with the provisions of Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and regulations implementing that chapter.

- Personnel Experience

(e) Any person who is authorized by the district, special education local plan area, or county office to provide early education or related services to infants shall have appropriate experience in normal and atypical infant development and an understanding of the unique needs of families of infants with exceptional needs, or, absent that experience and understanding, shall undergo a comprehensive training plan for that purpose, which plan shall be developed and implemented as part of the staff development component of the local plan for early education services.

- Medically Necessary OT/PT

56426.7. Medically necessary occupational therapy and physical therapy shall be provided to the infant when warranted by medical diagnosis and contained in the individualized education program, as specified under Section 7575 of the Government Code.

- Individualized Education Program

56426.8. (a) Early education and related services shall be based on the needs of the infant and the family as determined by the individualized education program team, and shall be specified in the individualized education program, including the frequency and duration of each type of service. The provision of any early education or related service may be provided only upon written parental consent.

- Infant's Physician

(b) The individualized education program for any infant shall be developed in consultation with the infant's physician in order to ensure that the services specified in the plan do not conflict with the infant's medical needs

- Services Beyond Age Three

56426.9. Any infant who becomes three years of age while participating in an early education program under this chapter may continue in the program until June 30 of the current program year, if determined appropriate by the individualized education program team. No later than June 30 of that year, an individualized education program team shall meet to review the infant's progress, determine eligibility for preschool special education services, and develop the individualized education program accordingly. That individualized education program team meeting shall be conducted by the local educational agency responsible for the provision of preschool special education services. Representatives of the early education program shall be invited to that meeting.

- Discretionary Funds for Infant Program

56427. (a) Not less than two million three hundred twenty-four thousand dollars ($2,324,000) of the federal discretionary funds appropriated to the State Department of Education under Public Law 94-142 in any fiscal year shall be expended for early education programs for infants with exceptional needs and their families, until the department determines, and the Legislature concurs, that the funds are no longer needed for that purpose.

(b) Programs ineligible to receive funding pursuant to Section 56425 or 56728.8 may receive funding pursuant to subdivision (a).

- Maintenance of Infant Services

56428. For the 1985-86 fiscal year, and each fiscal year thereafter, any instructional personnel service unit that was used in the prior fiscal year to provide services to children younger than three years of age shall continue to be used for that purpose. If a special education local plan area becomes ineligible for all or any portion of those instructional personnel service units operated and fundable in the prior fiscal year, the Superintendent of Public Instruction shall allocate those units to another local plan area for the purpose of providing services to children younger than three years of age.

- Local Plan for Early Education Services

56429. In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56728.8 is conditioned upon the approval by the Superintendent of Public Instruction of a local plan for early education services, which approval shall apply for not less than one, nor more than three, years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services.

- Methods of Providing Services

56430. (a) Early education services may be provided by any of the following methods:

(1) Directly by a local educational agency.

(2) Through an interagency agreement between a local educational agency and another public agency.

(3) Through a contract with another public agency pursuant to Section 56369.

(4) Through a contract with a certified nonpublic, nonsectarian school, or nonpublic, nonprofit agency pursuant to Section 56366.

(5) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

(b) Contracts or agreements with agencies identified in subdivision (a) for early education services are strongly encouraged when early education services are currently provided by another agency, and when found to be cost-effective means of providing the services. The placement of individual infants under any such contract shall not require specific approval by the governing board of the district or the county office.

(c) Early education services provided under this chapter shall be funded pursuant to Sections 56427, 56428, and 56728.8. Early education programs shall not be funded pursuant to any of Sections 56740 to 56743, inclusive.

- Criteria for Private Preschool Contracting

56431. The superintendent shall develop procedures and criteria to enable a district, special education local plan area, or county office to contract with private nonprofit preschools or child development centers to provide special education and related services to infant and preschool age individuals with exceptional needs. The criteria shall include minimum standards that the private, nonprofit preschool or center shall be required to meet.

## CHAPTER 4.45. SPECIAL EDUCATION PROGRAMS FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS BETWEEN THE AGES OF THREE AND FIVE YEARS, INCLUSIVE

- PROGRAMS FOR INDIVIDUALS BETWEEN THE AGES OF THREE AND FIVE YEARS, INCLUSIVE

- Local Plan

56440. (a) Each special education local plan area shall submit a plan to the superintendent by September 1, 1987, for providing special education and services to individuals with exceptional needs, as defined by the State Board of Education, who are between the ages of three and five years, inclusive, who do not require intensive special education and services but who would be eligible for special education and services under Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and 1419).

- Four-Year Phase-In

(b) The superintendent shall provide for a four-year phase-in of the individuals with exceptional needs qualifying for special education and services under Public Law 99-457, who do not require intensive special education and services, through an application process to be developed by the superintendent.

- Serve All by June 30, 1991

(c) All individuals with exceptional needs between the ages of three and five years, inclusive, identified in subdivision (a) shall be served by the districts and county offices within each special education local plan area by June 30, 1991, to the extent required under federal law and pursuant to the local plan and application approved by the superintendent.

- Individuals Requiring Intensive Special Education and Services

(d) Individuals with exceptional needs between the ages of three and five years, inclusive, who are identified by the district, special education local plan area, or county office as requiring intensive special education and services, as defined by the State Board of Education, shall be eligible for special education and services pursuant to this part and shall not be subject to any phase-in plan.

- School Facilities Impaction

(e) In special education local plan areas where individuals with exceptional needs between the ages of three and five, inclusive, who do not require intensive special education and services, are expected to have an increased demand on school facilities as a result of projected growth, pursuant to this chapter, the special education local plan area director shall submit a written report on the impacted local educational agencies to the State Allocation Board by December 1, 1987. The State Allocation Board shall assess the situation and explore ways of resolving the school facilities impaction situation.

- Alternative Instructional Settings

(f) The superintendent shall provide technical assistance to local educational agencies in order to help identify suitable alternative instructional settings to alleviate the school facilities impact situation. Alternative instructional settings may include, but are not limited to, state preschool programs, or the child's home. Nothing in this chapter shall cause the displacement of children currently enrolled in these settings.

- Chapter Applies to All Individuals with Exceptional Needs Between 3 and 5

(g) This chapter applies to all individuals with exceptional needs between the ages of three and five, inclusive.

- Legislative Findings and Declarations

56441. The Legislature hereby finds and declares that early education programs for individuals with exceptional needs between the ages of three and five years, inclusive, which provide special education and related services within the typical environment appropriate for young children, and include active parent involvement, may:

(a) Significantly reduce the potential impact of any handicapping conditions.

(b) Produce substantial gains in physical development, cognitive development, language and speech development, psychosocial development, and self-help skills development.

(c) Help prevent the development of secondary handicapping conditions.

(d) Reduce family stresses.

(e) Reduce societal dependency and institutionalization.

(f) Reduce the need for special class placement in special education programs once the children reach school age.

(g) Save substantial costs to society and our schools.

- Services Provided in Coordination with Other Agencies

56441.1. (a) Services rendered by state and local agencies serving preschool children with exceptional needs and their families shall be provided in coordination with other state and local agencies. Educational agencies offering similar educational services shall coordinate and not duplicate these services. The Superintendent of Public Instruction shall identify similar services by other state and local agencies. Any child identified as currently being served and qualified as an individual with exceptional needs as defined in Section 56026, and who meets the eligibility criteria of Section 56441.11 shall be counted as an individual under the funding cap prescribed by Section 56447.

- Readiness for Kindergarten and Later School Success

(b) As the preschool child approaches the age to enter an elementary school environment, the child's preparation shall be geared toward a readiness for kindergarten and later school success.

- Early Education Program

56441.2. An early education program for individuals with exceptional needs between the ages of three and five, inclusive, shall include specially designed services to meet the unique needs of preschool children and their families. To meet this purpose, the program focus is on the young child and his or her family and shall include both individual and small group services which shall be available in a variety of typical age-appropriate environments for young children, including the home, and shall include opportunities for active parent involvement.

- Services to Individuals or Small Groups

56441.3. (a) Early education services for preschool children may be provided to individuals or small groups and shall include:

(1) Observing and monitoring the child's behavior and development in his or her environment.

(2) Presenting activities that are developmentally appropriate for the preschool child and are specially designed, based on the child's exceptional needs, to enhance the child's development. Those activities shall be developed to conform with the child's individualized education program and shall be developed so that they do not conflict with his or her medical needs.

(3) Interacting and consulting with the family members, regular preschool teachers, and other service providers, as needed, to demonstrate developmentally appropriate activities necessary to implement the child's individualized education program in the appropriate setting pursuant to Section 56441.4 and necessary to reinforce the expansion of his or her skills in order to promote the child's educational development. These interactions and consultations may include family involvement activities.

(4) Assisting parents to seek and coordinate other services in their community that may be provided to their child by various agencies.

(5) Providing opportunities for young children to participate in play and exploration activities, to develop self-esteem, and to develop preacademic skills.

(6) Providing access to various developmentally appropriate equipment and specialized materials.

(7) Providing related services as defined in Section 300.13 of Title 34 of the Code of Federal Regulations, that include parent counseling and training to help parents understand the special needs of their children and their children's development, as that section read on May 1, 1987.

- Duration of Group Services

(b) The duration of group services shall not exceed four hours per day unless determined otherwise by the individualized education program team.

- Appropriate Settings

56441.4. Appropriate settings for these services include:

(a) The regular public or private nonsectarian preschool program.

(b) The child development center or family day care home.

(c) The child's regular environment, which may include the home.

(d) A special site where preschool programs for both handicapped and nonhandicapped children are located close to each other and have an opportunity to share resources and programming.

(e) A special education preschool program with nonhandicapped children attending and participating for all or part of the program.

(f) A public school setting which provides an age-appropriate environment, materials, and services, as defined by the superintendent.

- Instructional Adult-to-Child Ratios

56441.5. Appropriate instructional adult-to-child ratios for group services shall be dependent on the needs of individuals with exceptional needs between the ages of three and five years, inclusive, who require special education and related services, the number of children per instructional adult shall be less than ratios set forth in subdivision (b) of Section 18204 of Title 5 of the California Administrative Code as it read on May 1, 1987, for young children in a regular preschool program. Group services provided to individuals with exceptional needs between the ages of three and five years, inclusive, identified as severely handicapped pursuant to Section 56030.5 shall not exceed an instructional adult-to-child ratio of one to five.

- Transdisciplinary Team Approach

56441.6. Early education services for preschool children shall be provided through a transdisciplinary team approach of professionals as described in Section 56426.6. Responsibilities of early education program staff shall include consultation with regular preschool program providers, consultation with other specialists, assessment services, and direct services.

- Maximum Caseload for Speech and Language Specialist

56441.7. (a) The maximum caseload for a speech and language specialist providing services exclusively to individuals with exceptional needs, between the ages of three and five years, inclusive, as defined in Section 56441.11 or 56026, shall not exceed a count of 40.

- Caseload Guidelines/ Proposed Regulations

(b) The superintendent shall issue caseload guidelines or proposed regulations to local educational agencies for individuals with exceptional needs between the ages of three and five years, inclusive, by January 1, 1988.

- Methods of Providing Early Education Services

56441.8. Early education services for preschoolers may be provided by any of the following methods:

(a) Directly by a local educational agency.

(b) Through an interagency agreement between a local educational agency and another public agency.

(c) Through a contract with another public agency pursuant to Section 56369.

(d) Through a contract with a certified nonpublic, nonsectarian school; or nonpublic, nonprofit agency pursuant to Section 56366.

(e) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

- Contracts/Agreements

56441.9. Contracts or agreements with agencies identified in Section 56441.8 are strongly encouraged when these services are currently provided by another agency, and when found to be a cost-effective means of providing the services. The placement of an individual preschool child under any of these contracts shall not require specific approval by the governing board of the school district or the county superintendent of schools.

- Nonpublic, Nonsectarian School Funding Waiver

56441.10. Early education services provided under this chapter for preschoolers identified as individuals with exceptional needs pursuant to subdivisions (a) to (e), inclusive, of Section 56441.11 shall not be funded pursuant to any of Sections 56740 to 56743, inclusive, unless a waiver of this section is approved by the superintendent.

- Individuals with Exceptional Needs Between 3 and 5 Years

56441.11. Individuals with exceptional needs between the ages of three and five years, inclusive, shall meet the requirements of Section 56026 or shall satisfy all of the following:

- Identified by IEP Team

(a) They shall be identified by an individualized education program team as a handicapped child as that term was defined in subsection (1) of Section 1401 of Title 20 of the United States Code as it read July 1, 1980.

- Impairment Requires Special Instruction/ Services

(b) Their impairment, as described by subdivision (a) requires instruction or services, or both, which cannot be provided with modification of a regular preschool program or of a child's home environment, or both.

(c) They shall fall within one of the following:

- Eligibility Criteria

(1) They meet eligibility criteria set forth in subdivisions (a) and (b), paragraphs (2) and (3) of subdivision (c), and subdivisions (d) to (i), inclusive, of Section 3030 of Title 5 of the California Administrative Code as it read on May 1, 1987.

(2) They have a disorder in one or more basic psychological processes involved in understanding or using language as defined in paragraph (1) of subdivision (j) of Section 3030 of Title 5 of the California Administrative Code as it read on May 1, 1987, which may manifest itself in an impaired ability to listen, think, speak, or develop preacademic skills. They have a discrepancy of at least 25 percent between their cognitive development and their development in one or more of the following areas: gross or fine motor, receptive language, expressive language, and school readiness. School readiness includes those skills that lead to the ability to read, write, spell, do mathematical calculations, and understand or use spoken language. The decision as to whether or not a discrepancy exists shall be made by the individualized education program team.

(3) They have an articulation disorder displaying reduced intelligibility or an inability to use the speech mechanism that significantly interferes with communication and attracts adverse attention. Significant interference occurs when the child's developmental scale of articulation competency is six months or more below that expected for his or her chronological age or developmental level.

(4) They have a language disorder that results in a significant delay in their language development. A significant delay occurs when one area of the child's language development is at least 25 percent below his or her chronological age or developmental level. Areas of language development include receptive and expressive language in the areas of phonology, morphology, syntax, semantics, and pragmatics.

- Not Individuals with Exceptional Needs

(d) Unless handicapped within the meaning of subdivisions (a) to (c), inclusive, children whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or maturational, environmental, cultural, or economic factors are not individuals with exceptional needs.

- Alternative Means to Standardized Tests

(e) When standardized tests are considered invalid for children ages three and five years, inclusive, alternative means, such as scales, instruments, observations, and interviews shall be used as specified in the assessment plan.

- Evaluate Effectiveness of Eligibility Criteria

56441.12. By June 30, 1989, the superintendent shall evaluate the effectiveness of Section 56441.11 for identification of preschool children with exceptional needs and recommend legislative changes as needed.

- Training and Technical Assistance

56441.13. The superintendent shall provide training and technical assistance for the implementation of early education programs for preschool children with exceptional needs, and shall develop:

(a) Methods and models for modifications to the regular program prior to referral.

(b) Guidelines for program providers.

(c) Curriculum and content for programs.

(d) Personnel standards for program providers.

(e) A plan to meet the unique needs of preschool children who require special education services and who are limited-English proficient and of diverse cultural backgrounds.

- Transportation Criteria and Options

56441.14. Criteria and options for meeting the special education transportation needs of individuals with exceptional needs between the ages of three and five, inclusive, shall be included in the local transportation policy required pursuant to paragraph (5) of subdivision (b) of Section 56221.

- Coordination of Preschool Programs

56442. The superintendent shall ensure that state preschool programs and programs for individuals with exceptional needs between the ages of three and five years, inclusive, provided pursuant to this part, are coordinated at the state and local levels.

- Head Start Interagency Agreement

56443. (a) The State Department of Education shall amend its interagency agreement with the Administration for Children, Youth, and Families, Region IX, Head Start, United States Department of Health and Human Services, to permit a district, special education local plan area, or county office to contract with a Head Start program for special education and services for individuals with exceptional needs between the ages of three and five years pursuant to this part.

- Supplement - Not Supplant Head Start Funds

(b) Apportionments allocated to Head Start programs for special education and services to individuals with exceptional needs between the ages of three and five years shall supplement and not supplant funds for which the Head Start programs are eligible, or are already receiving, from other funding sources.

- Evaluate Effectiveness of Expanded Preschool Programs

56444. As part of the annual evaluation of special education programs pursuant to Section 56602, the superintendent shall conduct an evaluation of the effectiveness of the expanded preschool programs for individuals with exceptional needs between the ages of three and five years, inclusive, who do not require intensive special education and services. The evaluation shall be conducted over a five-year period, from the 1987-88 school year through the 1991-92 school year. The evaluation shall contain, but not be limited to, data on numbers and types of pupils who do not enter special education programs at kindergarten, or first grade as the case may be, but who received special education and services pursuant to this part, in a preschool program.

56445. (a) Prior to transitioning an individual with exceptional needs from a preschool program to kindergarten, or first grade as the case may be, an appropriate reassessment of the individual shall be conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 to determine if the individual is still in need of special education and services.

- Reassessment Prior to Transitioning to Kindergarten or First Grade

(b) It is the intent of the Legislature that gains made in the special education program for individuals who received special education and services, in accordance with this chapter, are not lost by too rapid a removal of individualized programs and supports for these individuals.

- Gains Made in Program

(c) As part of the transitioning process, a means of monitoring continued success of the child shall be identified by the individualized education program team for those children of kindergarten or first grade equivalency who are determined to be eligible for less intensive special education programs.

- Monitoring Continued Success

(d) As part of the exit process from special education, the present performance levels and learning style shall be noted by the individualized education program team. This information shall be made available to the assigned regular education teacher upon the child's enrollment in kindergarten or first grade as the case may be.

- Exit Process from Special Education

56446. (a) The superintendent shall develop a funding formula for the distribution of federal funds under Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and 1419) to local providers. The funding formula shall be developed in consultation with the Legislative Analyst and the Director of Finance. The funding formula shall include a provision to address planning and development, program startup costs, including assessments and equipment, staff development, rental or leasing of facilities, and transportation. The funding formula shall also allow federal incentive funds generated under Title

- Funding Formula

II of Public Law 99-457 to be carried over by the local educational agencies from year to year during the phase-in fiscal years of 1987-88 to 1990-91, inclusive. Any carry over funds shall be reported to the superintendent. The federal incentive funds for this program received for individuals with exceptional needs between the ages of three and five years, inclusive, who are not identified as having intensive needs, shall not be included for purposes of subdivision (a) of Section 56712, including additional funds received for these children under Public Law 94-142 (20 U.S.C. Secs. 1232, 1401, 1405, 1406, 1411-1420, incl., and 1453). These individuals shall not be included in the enrollment counts or computations prescribed by Section 56728.6.

(b) The superintendent shall report to the Joint Legislative Budget Committee and the Department of Finance annually on or before October 15 on the implementation of Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413 and 1419). The report shall include, but not be limited to, the status of the phase-in plan, number of children being served, projected number of children to be served in the next school year, and anticipated federal funding for the next school year. This subdivision shall remain operative only until January 1, 1992, unless a later enacted statute, which is chaptered on or before January 1, 1992, deletes or extends that date.

- Report to Joint Legislative Budget Committee/Department of Finance

(c) Public special education funding shall not be used to purchase regular preschool services or to purchase any instructional service other than special education and services permitted by this chapter.

- Restriction on Use of Funds

56447. (a) The superintendent shall adopt rules and regulations to ensure that apportionments, inclusive of federal funds, for all individuals with exceptional needs between the ages of three and five years, inclusive, shall be paid to the extent permitted by federal law for no more than 3 percent of the statewide population of all children between the ages of three and five years, inclusive, as determined in the demographics prepared by the Department of Finance in the 1990-91 fiscal year.

- Three Percent Service Level for Apportionments

(b) Individuals with exceptional needs served under this chapter shall not be subject to subdivision (a) of Section 56760. However, individuals with intensive needs and appropriate instructional personnel service units required to

- Exclusion from 10 Percent Funding Ratio provide educational services to individuals with exceptional needs shall be included in the computations prescribed in Section 56728.6.

56447.1. (a) Nothing in this chapter shall be construed to limit the responsibility of noneducational public agencies in the State of California from providing or paying for some or all of the costs of a free appropriate public education for individuals with exceptional needs between the ages of three and five years, inclusive.

- Funding Responsibilities of Noneducational Public Agencies

(b) Nothing in this chapter shall be construed to permit a noneducational public agency to reduce medical and other assistance available or to alter eligibility under Titles V and XIX of the Social Security Act (Subchapter V (commencing with Section 701) and Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code) with respect to the provision of a free appropriate public education for individuals with exceptional needs between the ages of three and five years, inclusive, within the State of California.

56448. If the federal government fails to fund the authorized level of Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and 1419) during the federal fiscal year of 1988, or any fiscal year thereafter, California shall terminate its participation in this program.

- Termination Clause

56449. This chapter shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five year, pursuant to Section 56448, and as of that date is repealed.

- Automatic Repeal Provision

## CHAPTER 4.5. CAREER AND VOCATIONAL EDUCATION PROGRAMS, TRANSITION SERVICES, AND PROJECT WORKABILITY

- CAREER/VOCATIONAL EDUCATION/ TRANSITION SERVICES/ PROJECT WORKABILITY

### Article 1. Career and Vocational Education Programs

- Secure Federal Funds

56452. The superintendent shall ensure that the state annually secures all federal funds available for career and vocational education of individuals with exceptional needs.

- Interagency Agreement with Department of Rehabilitation

56453. The superintendent and the Department of Rehabilitation shall enter into an interagency agreement to ensure that the state annually secures all federal funds available under the Rehabilitation Act of 1973, as amended, and that coordination in applying for, distributing, and using funds available under the Vocational Education Act, as amended, the Rehabilitation Act of 1973, as amended, and the Education For All Handicapped Children Act of 1975, (P.L. 94-142), as amended, including, but not limited to, application for, and use thereof, be provided.

- State Superintendent's Responsibilities

56454. In order to provide districts, special education local plan areas, and county offices with maximum flexibility to secure and utilize all federal funds available to enable those entities to meet the career and vocational needs of individuals with exceptional needs more effectively and efficiently, and to provide maximum federal funding to those agencies for the provision of that education, the superintendent shall do all the following:

(a) Provide necessary technical assistance to districts, special education local plan areas, and county offices.

(b) Establish procedures for these entities to obtain available federal funds.

(c) Apply for necessary waivers of federal statutes and regulations including, but not limited to, those governing federal career and vocational education programs.

56456. It is the intent of the Legislature that districts, special education local plan areas, and county offices may use any state or local special education funds for approved vocational programs, services, and activities to satisfy the excess cost matching requirements for receipt of federal vocational education funds for individuals with exceptional needs.

- Excess Cost Matching Requirements

## Article 2. Transition Services

- TRANSITION SERVICES

- Legislative Findings and Declarations

56460. The Legislature finds and declares all of the following:

(a) That while the passage of the Education for All Handicapped Children Act of 1975 (Public Law 94-142) and the California Master Plan for Special Education have resulted in improved educational services for individuals with exceptional needs; this has not translated into paid employment opportunities or maximum integration into our heterogeneous communities for individuals with exceptional needs.

(b) That there is no formalized process that bridges the gap between the security and structure of school and the complexity of service options and resources available for individuals with exceptional needs in the adult community.

(c) That there is insufficient coordination between educators, adult service providers, potential employers, and families and students in order to effectively plan and implement a successful transition for students to the adult world of paid employment and social independence.

(d) That because of insufficient vocational training throughout the middle and secondary school years, and effective interagency coordination and involvement of potential employers in a planning process, the majority of options available for individuals with exceptional needs in the adult community are programs that support dependence rather than independence.

(e) The goal of transition services is planned movement from secondary education to adult life that provides opportunities which maximize economic and social independence in the least restrictive environment for individuals with exceptional needs. Planning for transition from school to postsecondary environments should begin in the school system well before the student leaves the system.

- Covers a Broad Range of Individuals

56461. The superintendent shall establish the capacity to provide transition services for a broad range of individuals with exceptional needs such as employment and academic training, strategic planning, interagency coordination, and parent training.

- Components of Transition Services

56462. The transition services shall include, but not be limited to, the following:

(a) In-service training programs, resource materials, and handbooks that identify the following:

(1) The definition of "transition," including the major components of an effective school-based transition program.

(2) Relevant laws and regulations.

(3) The roles of other agencies in the transition process including, but not limited to, the scope of their services, eligibility criteria, and funding.

(4) The components of effective transition planning.

(5) The role of families in the individualized transition process.

(6) Resources and model programs currently available in California.

- Role of Special Education in Transition Process

(b) Development of the role and responsibilities of special education in the transition process, including the following:

(1) The provision of work skills training, including those skills that are necessary in order to exhibit competence on the job.

(2) The provision of multiple employment options and facilitating job or career choice by providing a variety of vocational experiences.

(3) The collection and analysis of data on what happens to students once they leave the school system and enter the adult world.

(4) The coordination of the transition planning process, including development of necessary interagency agreements and procedures at both state and local levels.

(5) The provision of instructional learning strategies that will assist students who find learning difficult in acquiring skills that will enable them to obtain diplomas, promote a positive attitude toward secondary and postsecondary education and training, and make a successful transition to postsecondary life.

- Systematic and Longitudinal Vocational Education Curriculum

(c) The development and implementation of systematic and longitudinal vocational education curriculum including the following:

(1) Instructional strategies that will prepare students with severe disabilities to make a successful transition to supported employment and the community.

(2) The introduction of vocational and career education curriculum in the elementary grades for those students who can benefit from it.

- Support Active Participation of Families

(d) Materials, resource manuals, and in-service training programs to support the active participation of families in the planning and implementation of transition-related goals and activities.

(e) The development of resources and in-service training that will support the implementation of individualized transition planning for all students with exceptional needs.

- Resources and In-Service Training

(f) The development of a network of model demonstration sites that illustrate a wide variety of transition models and implementation strategies.

- Demonstration Sites

(g) Coordination with other specialized programs that serve students who face barriers to successful transition.

- Coordination with Other Programs

(h) A research, evaluation, and dissemination program that will support the major programmatic aspects of transition services. Through a variety of competitive grants, bids, contracts, and other awards specific content areas will be developed in cooperation with a variety of field-based agencies, including local education agencies, special education local plan areas, county offices, institutions of higher education, and in-service training agencies.

- Research, Evaluation, and Dissemination

(i) The superintendent shall annually report to the education and fiscal policy committees of the Legislature on the implementation and effectiveness of transition services.

- Annual Report to Legislature

56463. Transition services shall be funded pursuant to the Budget Act.

- Funded Pursuant to Budget Act

### Article 3. Project Workability

- PROJECT WORKABILITY

56470. The Legislature finds and declares all of the following:

- Legislative Findings and Declarations

(a) That an essential component of transition services developed and supported by the State Department of Education is project workability.

(b) That the workability program provides instruction and experiences that reinforce core curriculum concepts and skills leading to gainful employment.

(c) That since project workability was established by the State Department of Education in 1981, substantial numbers of individuals with exceptional needs have obtained full- or part-time employment.

(d) That project workability is a true partnership established at the state level through nonfinancial interagency agreements between the State Department of Education, the Department of Employment Development, and the Department of Rehabilitation, and has elevated awareness in the private sector of the employment potential of individuals with exceptional needs, and focuses its efforts in developing careers for these youth, and preventing needless economic and social dependency on state and community agencies and resources.

(e) That local education agencies in California establish linkage between agencies, eliminate duplication of effort, and develop precedent-setting employment training practices which should be preserved and advanced to better assure future productive employable citizens.

56471. (a) The program shall be administered by the State Department of Education.

- Administration of Workability Program

(b) The department shall establish an advisory committee. This committee will include representatives from local workability projects to ensure ongoing communications.

- Advisory Committee

(c) The superintendent shall develop criteria for awarding grants, funding, and evaluating workability projects.

- Grants, Funding, and Evaluation

(d) Workability project applications shall include, but are not limited to, the following elements: (1) recruitment, (2) assessment, (3) counseling, (4) preemployment skills training, (5) vocational training, (6) student wages for try-out employment, (7) placement in unsubsidized employment, (8) other assistance with transition to a quality adult life, and (9) utilization of an interdisciplinary advisory committee to enhance project goals.

- Project Applications

56472. The population served by workability projects may include secondary students with disabilities, adults with disabilities and other individuals who experience barriers to successful completion of school.

- Population Served

56473. Project workability shall be funded pursuant to Item 6100-161-001 and Item 6100-161-890 of the Budget Act.

- Funded Pursuant to Budget Act

56474. The superintendent shall continue to seek additional state and federal funding for project workability.

- Seek Additional Funding

## CHAPTER 4.7. INTERAGENCY AGREEMENTS

- INTERAGENCY AGREEMENTS

56475. (a) The superintendent and the directors of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Department of the Youth Authority, and the Employment Development Department shall develop written interagency

- Written Agreements

- Fiscal Responsibilities

agreements which include fiscal responsibilities for the provision of special education and related services to individuals with exceptional needs in the State of California.

- Other Agreements

(b) The superintendent shall develop interagency agreements with other state and local public agencies, as deemed necessary by the superintendent, to carry out the provisions of state and federal law.

- Submit to Legislature

(c) (1) Each interagency agreement shall be submitted by the superintendent to each legislative fiscal committee, education committee, and policy committee, responsible for legislation relating to those individuals with exceptional needs that will be affected by the agreement if it is effective.

- Effective Date of Agreements

(2) An interagency agreement shall not be effective sooner than 30 days after it has been submitted to each of the legislative committees specified in paragraph (1).

## CHAPTER 5. PROCEDURAL SAFEGUARDS

- PROCEDURAL SAFEGUARDS

- Public Education Agency Definition

56500. As used in this chapter, "public education agency" means a district, special education local plan area, or county office, depending on the category of local plan elected by the governing board of a school district pursuant to Section 56170, or any other public agency providing special education or related services.

- PL 94-142 Procedural Safeguards

56500.1. All procedural safeguards of Public Law 94-142, the Education for All Handicapped Children Act of 1975, shall be established and maintained by each noneducational and educational agency that provides education, related services, or both, to children who are individuals with exceptional needs.

- Resolution of Complaints

56500.2. An expeditious and effective process shall be implemented for the resolution of complaints regarding any alleged violations of the provisions of the Education for All Handicapped Children Act of 1975.

- Due Process Hearing Circumstances

56501. (a) The due process hearing procedures prescribed by this chapter extend to the pupil, the parent, and the public education agency involved in any decisions regarding a child under any of the following circumstances, and the pupil, the parent, and the public education agency involved may initiate the due process hearing procedures prescribed by this chapter under any of the following circumstances:

(1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.

(2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.

(3) The parent refuses to consent to an assessment of the child.

- Hearing Rights

(b) The due process hearing rights prescribed by this chapter include, but are not limited to, all the following:

(1) The right to a mediation conference pursuant to Sections 56502 and 56503.

(2) The right to examine pupil records pursuant to Section 56504. This provision shall not be construed to abrogate the rights prescribed by Chapter 6.5 (commencing with Section 49060) of Part 27.

(3) The right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Section 56505.

- Additional Parent Rights

(c) In addition to the rights prescribed by subdivision (b), the parent has the following rights:

(1) The right to have the pupil who is the subject of the state hearing present at the hearing.

(2) The right to open the state hearing to the public.

- Written Request for Hearing

56502. (a) All requests for a due process hearing shall be filed with the superintendent. The party initiating a due process hearing by filing a written request with the superintendent shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the superintendent. Within three days following receipt by the public education agency of a copy of such request, the public education agency shall advise the parent of free or low-cost legal services and other relevant services available within the geographical area. The superintendent shall take steps to ensure that within 45 days after receipt of the written hearing request the hearing is immediately commenced and completed, including, any mediation conducted pursuant to Section 56503, and a final administrative decision is rendered, unless a

- Low-Cost Legal Services

- Forty-five Days to Complete Hearing

continuance has been granted pursuant to Section 56503 or 56505.

- Informal Meeting to Resolve Issues

(b) Notwithstanding any procedure set forth in this chapter, a public education agency and a parent may, if the party initiating the hearing so chooses, meet informally to resolve any issue or issues relating to the identification, assessment, or education and placement of the child, or the provision of a free, appropriate public education to the child, to the satisfaction of both parties prior to the mediation conference. The informal meeting shall be conducted by the district superintendent, county superintendent, or director of the public education agency or his or her designee. Any designee appointed pursuant to this subdivision shall have the authority to resolve the issue or issues.

- Notification of Both Parties

- Low-Cost Legal Services

(c) Upon receipt by the superintendent of a written request by the parent or public education agency, the superintendent or his or her designee or designees shall immediately notify, in writing, both parties of the request for the hearing and the proposed date for the mediation conference. The notice shall advise both parties of all their rights relating to procedural safeguards, including the right to waive the mediation conference. The superintendent shall inform the public education agency of its responsibility to advise the parent of free or low-cost legal services and other relevant services available within the geographical area.

- Mediation Conference to Be Nonadversarial

56503. (a) It is the intent of the Legislature that the mediation conference be an intervening, informal process conducted in a nonadversarial atmosphere.

- Fifteen Days to Complete Conference

- Continuance

(b) The mediation conference shall be conducted prior to holding the administrative due process hearing pursuant to Section 56505, unless either party waives the mediation conference. The conference shall be completed within 15 days of receipt by the superintendent of the request for the hearing. Either party to the mediation conference may request the superintendent or his or her designee to grant a continuance. Such a continuance shall be granted upon a showing of good cause. Any continuance shall not extend the 45-day maximum for completion of the due process hearing and rendering of the final administrative decision, unless the party initiating the request for the hearing is agreeable to such an extension. Such continuance shall extend the time for rendering a final administrative decision for a period only equal to the length of the continuance.

- Parent Right to Examine/ Receive Documents

(c) The parent shall have the right, pursuant to Section 56504, to examine and receive copies of any documents contained in the child's file, maintained by the public education agency, prior to the date set for the mediation conference. The parent may be accompanied by a representative or representatives that he or she has chosen.

- Resolution of Issues

(d) Based upon the mediation conference, the district superintendent, the county superintendent, or the director of the public education agency, or his or her designee, may resolve the issue or issues. However, such resolution shall not conflict with state or federal law and shall be to the satisfaction of both parties. A copy of the written resolution shall be mailed to each party within 10 days following the mediation conference. A copy shall also be filed with the Advisory Commission on Special Education.

- Failure to Resolve Issues

(e) If the mediation conference fails to resolve the issues to the satisfaction of both parties, a state-level hearing pursuant to Section 56505 shall be held.

- Unresolved Issues Basis for Hearing

(f) If the mediation conference fails to resolve the issues to the satisfaction of both parties, the mediator shall list any unresolved issues. A list of unresolved issues shall be reviewed and approved by the party initiating the hearing. These unresolved issues shall be the basis for the state-level hearing, prescribed by Section 56505.

- Mediator

(g) The mediation conference shall be conducted in accordance with regulations adopted by the board and shall be conducted by a mediator knowledgeable in the laws governing special education under contract with the department.

- Time and Place

(h) Any mediation conference held pursuant to this section shall be held at a time and place reasonably convenient to the parent and pupil.

- Use of Attorney

(i) Notwithstanding the intent of the Legislature that the mediation conference be informal and nonadversarial, if the public education agency uses an attorney as its representative during any part of the conference, such use shall be governed by Section 56507.

- Parent Right to Examine School Records/Receive Copies

56504. The parent shall have the right and opportunity to examine all school records of the child and to receive copies pursuant to this section and to Section 49065 within five days after such request is made by the parent, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing such records, but if this cost effectively prevents the parent from exercising the right to receive such copy or copies the copy or copies shall be reproduced at no cost.

- State Hearing

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board. The hearing shall be conducted by a person knowledgeable in administrative hearings under contract with the department.

- Time and Place

(b) The hearing shall be held at a time and place reasonably convenient to the parent and the pupil.

- Conducted by Knowledgeable Person

(c) The hearing shall be conducted by a person knowledgeable in the laws governing special education and administrative hearings under contract with the department.

- Pupil Placement During Hearing

(d) During the pendency of the hearing proceedings, including the actual state-level hearing, the pupil shall remain in his or her present placement unless the public agency and the parent agree otherwise.

- Hearing Rights

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of handicapped children.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written or electronic verbatim record of the hearing.

(5) The right to written findings of fact and the decision.

(6) The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing.

- Use of Attorney

(f) The use of an attorney as a representative of the public education agency during any part of the hearing shall be governed by Section 56507.

- Written Decision Within 45 Days

(g) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the superintendent or his or her designee to grant a continuance. The continuance shall be granted upon

- Continuance

a showing of good cause. Any continuance shall extend the time for rendering a final administrative decision for a period only equal to the length of the continuance.

- Final Administrative Determination

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

- Hearing Officer Considers Cost

(i) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

- Right to Appeal to Court

(j) Nothing in this chapter shall preclude a party from exercising the right to appeal the decision to a court of competent jurisdiction. Any appeal to court by a public education agency or parent shall not operate as an automatic stay of enforcement of the final administrative determination. However, nothing in this section shall be construed to preclude either party to the hearing from seeking a stay of enforcement from any court of competent jurisdiction, and nothing in this section shall be construed to remove the requirement for parental consent for placement pursuant to subdivision (f) of Section 56506.

- Additional Due Process Rights

56506. In addition to the due process hearing rights enumerated in subdivision (b) of 56501, the following due process rights extend to the pupil and the parent:

(a) Written notice to the parent of his or her rights in language easily understood by the general public and in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible. The written notice of rights shall include, but not be limited to, those prescribed by Section 56341.

(b) The right to initiate a referral of a child for special education services pursuant to Section 56303.

(c) The right to obtain an independent educational assessment pursuant to subdivision (b) of Section 56329.

(d) The right to participate in the development of the individualized education program and to be informed of the availability under state and federal law of free appropriate public education and of all available alternative programs, both public and nonpublic.

(e) Written parental consent pursuant to Section 56321 shall be obtained before any assessment of the pupil is conducted unless the public education agency prevails in a due process hearing relating to such assessment.

(f) Written parental consent pursuant to Section 56321 shall be obtained before the pupil is placed in a special education program.

56507. (a) Except as provided in subdivisions (b) and (c), the public education agency shall not use the services of an attorney for actual presentation of written argument, oral argument, evidence, or any combination thereof, during any part of a mediation conference, individualized education program meeting, or state hearing.

- Restrictions on Use of Attorney

(b) The public education agency may initiate the use of the services of an attorney for actual presentation of written argument, oral argument, evidence, or any combination thereof, during a mediation conference, individualized education program meeting, or state hearing, provided that all the following requirements are satisfied:

- Public Education Agency Requirements

(1) The public education agency notifies the parent, in writing, of the use of such services at least three days prior to the mediation conference or individualized education program meeting, or at least 10 days prior to the state hearing, as appropriate.

- Notifies Parent

(2) The public education agency provides for a listing of attorneys knowledgeable in mediation conferences, individualized education program meetings, and state hearings to be provided to the parent.

- Provides Listing

(3) The public education agency bears only those costs of the services of any attorney provided to the parent for which the parent is required to pay. However, in no case shall such costs to the agency be greater than the cost to the agency for its own attorney services, including the cost of preparation and advice.

- Costs of Services

(c) (1) The public education agency may use the services of an attorney for actual presentation of written argument, oral argument, evidence, or any combination thereof, during a mediation conference, individualized education program meeting, or state hearing, if the parent initiates the use of the services of an attorney. The parent shall notify the public education agency, in writing, of the use of such services at least three days prior to the mediation conference or individualized education program meeting or at least 10 days prior to the state hearing, as appropriate.

- Parent Initiates Use of Attorney
- Notify Public Education Agency

(2) If the parent uses the services of an attorney pursuant to paragraph (1), the parent shall bear his or her costs.

- Bearing Costs

If the public education agency uses the services of an attorney pursuant to paragraph (1), it shall bear its costs.

(d) Nothing in this section shall be construed to limit the use of attorney services by a public education agency other than for actual presentation of written argument, oral argument, evidence, or any combination thereof during any part of the mediation conference, individualized education program meeting, or state hearing.

- Limitations

## CHAPTER 6. EVALUATION, AUDITS, AND INFORMATION

- EVALUATION, AUDITS, AND INFORMATION

- Legislative Intent on Program Evaluation

56600. It is the intent of the Legislature to provide for ongoing comprehensive evaluation of special education programs authorized by this part. The Legislature finds and declares that the evaluation of these programs shall be designed to provide the Legislature, the State Board of Education, the State Department of Education, and program administrators at special education local plan area, county, district, and school levels with the information necessary to refine and improve programs, policies, regulations, guidelines, and procedures on a continuing basis, and to assess the overall merits of these efforts.

- Evaluation Plan

56600.5. (a) The superintendent shall submit to the board, not later than July 1, 1989, an evaluation plan for special education. This plan shall outline a procedure to identify statewide evaluation priorities in special education and strategies to involve the special education local plan areas for their cooperation in conducting the studies.

- Plan Development

(b) The plan developed pursuant to subdivision (a) shall be developed in consultation with the Advisory Commission on Special Education and with other groups or individuals the superintendent deems appropriate.

- Plan Components

(c) The plan developed pursuant to subdivision (a) shall include, but not be limited to, all of the following:

(1) The identification of outcomes and goals against which programs can be judged.

(2) Questions requiring further research and how they are addressed in the evaluation plan.

(3) Research that has been conducted in these questions to date, including a brief summary of findings.

(4) Potential evaluation methodologies.

(5) The scope and probable duration of the evaluations.

(6) Organizations that could conduct these evaluations.

(7) Funding requirements for the evaluations.

(8) The potential policy implications of the proposed studies.

- Eligibility Criteria and Exit Criteria

(d) The evaluation plan developed pursuant to subdivision (a) shall also include provisions for both of the following:

(1) Analyzing the existing eligibility criteria for special education programs and services.

(2) The appropriateness of establishing specific, exit criteria for special education programs, and strengthening the exit process.

56601. Each special education local plan area shall submit to the superintendent at least annually an evaluation report in a form and manner prescribed by the superintendent. The reports shall include information necessary for the superintendent to carry out the responsibilities prescribed by Section 56602 and other statistical data, program descriptions, and fiscal information as the superintendent may require.

- Annual Report to State Superintendent

56602. In accordance with a program evaluation plan adopted pursuant to subdivision (e) of Section 56100, the superintendent shall submit to the board, the Legislature, and the Governor, an annual evaluation of the special education programs implemented under this part. This evaluation shall:

-Annual Special Education Evaluation

(a) Utilize existing information sources including fiscal records, enrollment data, and other descriptive data, and program reviews to gather ongoing information regarding implementation of programs authorized by this chapter.

- Existing Information Sources

(b) Utilize existing information to the maximum extent feasible to conduct special evaluation studies of issues of statewide concern. The studies may include, but need not be limited to, all of the following:

- Special Evaluation Studies

(1) Pupil performance. The State Department of Education shall assist special education local plan areas in the development of models of pupil performance in order to determine the success or failure of special education programs and services. As appropriate, special education pupils and parents of special education pupils shall be involved in the development of these models.

(2) Placement of pupils in least restrictive environments.

(3) Degree to which services identified in individualized education programs are provided.

(4) Parent, pupil, teacher, program specialist, resource specialist, and administrator attitudes toward services and processes provided.

(5) Program costs, including, but not limited to:

(A) Expenditures for instructional personnel services, support services, special transportation services, and regionalized services.

(B) Capital outlay costs at the district and school levels, and for special education local plan areas, county offices, state special schools, and nonpublic, nonsectarian schools.

(C) Funding sources at the district, special education local plan area, county office, state special school, and nonpublic, nonsectarian school levels.

- Data on Individuals/ Settings

(c) Identify the numbers of individuals with exceptional needs, their racial and ethnic data, their classification by designated instructional services, resource specialist, special day class or center, and nonpublic, nonsectarian schools, in accordance with criteria established by the board and consistent with federal reporting requirements.

- Report Information to Improve Policies, Etc.

56603. The Department of Education shall, as part of the annual evaluation, report the information necessary to refine and improve statewide policies, regulations, guidelines, and procedures developed pursuant to this part.

- Coordinate Design of Evaluations

56604. (a) The superintendent shall coordinate the design of evaluations to prevent duplication and to minimize data collection and reporting requirements at the school and district levels.

- Utilize Sampling Procedures

(b) The Department of Education shall utilize sampling procedures whenever feasible.

- Workshops and Seminars

56605. The superintendent shall periodically sponsor or conduct workshops and seminars for the education of local education agency personnel assigned to, and responsible for, the evaluation of local special education programs.

- On-Site Program/Fiscal Reviews

56606. The superintendent shall provide for onsite program and fiscal reviews of the implementation of plans approved under this part. In performing the reviews and audits, the superintendent may utilize the services of persons outside of the department chosen for their knowledge of special education programs. Each district, special education local plan area, or county office shall be reviewed at least once during the period of approval of its local plan.

## CHAPTER 7. FUNDING OF SPECIAL EDUCATION PROGRAMS

- FUNDING OF SPECIAL EDUCATION PROGRAMS

### Article 1. State Aid Apportionments

- STATE AID APPORTIONMENTS

56700. In fiscal year 1980-81 and in each fiscal year thereafter all apportionments to districts, special education local plan areas, and county offices for special education programs and services shall be computed pursuant to this chapter.

- Apportionments Computed Pursuant to Chapter 7

56701. The superintendent shall apportion funds for instructional personnel services, support services, and transportation services from Section A of the State School Fund directly to districts and county offices in accordance with the annual budget plan submitted pursuant to subdivision (e) of Section 56200, unless the plan specifies an alternative recipient.

- Funds Apportioned per Annual Budget Plan

56702. The superintendent shall apportion funds for regionalized services from Section A of the State School Fund to the administrative entity specified in the local plan to receive and distribute such funds. Upon receipt, each entity shall distribute the funds in accordance with the allocation plan adopted pursuant to subdivision (e) of Section 56200.

- Funds for Regionalized Services

### Article 2. Computation of State Aid

- COMPUTATION OF STATE AID

56710. The county superintendent shall compute, pursuant to this article, apportionments for state aid for special education programs and services for each district or county office operating special education programs and services.

- County Superintendent Computes Apportionments

56711. The county superintendent shall compute for each district and county office the sum of all the following:

- Compute Sum

(a) Instructional personnel services amount pursuant to Article 3 (commencing with Section 56720).

(b) Support services amount pursuant to Article 4 (commencing with Section 56730).

(c) Amount for pupils in nonpublic, nonsectarian schools pursuant to Article 5 (commencing with Section 56740).

(d) Amount for instructional time entitlement for special day classes under Sections 46200.5 and 46201.5.

56712. From the sum computed pursuant to Section 56711, the county superintendent shall subtract all the following:

- Subtract from Sum

(a) Applicable special education federal funds received by each district or county office.

- Federal Funds

(b) For the 1981-82 fiscal year only, an amount equal to the difference, if positive, between the sum of state aid received pursuant to this chapter, local general fund contribution, federal funds, and district revenue limits for special day classes and centers, and county taxes for special education for the prior fiscal year, and the amount actually spent on special education programs and services pursuant to this part, for the prior fiscal year.

- Prior Year Balances

(c) The property taxes allocated to special education programs pursuant to Section 2572.

- Property Taxes

(d) The district revenue limit amounts for pupils in special day classes and centers in each district or county office.

- District Revenue Limit for SDC/Center Classes

(e) The local general fund contribution for special education computed pursuant to Article 6 (commencing with Section 56750).

- Local General Fund Contribution

(f) Any amounts allocated to school districts for special education programs pursuant to subdivision (b) of Section 56713.

- Amounts Allocated Pursuant to 56713(b)

56713. (a) The amount computed pursuant to Section 56712 shall be apportioned as state aid. Commencing with the 1980-81 fiscal year and each fiscal year thereafter, state aid shall be apportioned as part of the apportionments prescribed by Sections 41330, 41332, and 41335.

- State Aid Apportioned as Prescribed

(b) Commencing in the 1982-83 fiscal year and for each fiscal year thereafter if, for any county office, the remainder computed pursuant to Section 56712 is a negative amount, no state aid shall be distributed to that county office for purposes of Section 56711. In addition, the county superintendent shall allocate an amount equal to that negative amount to school districts in that county on the basis of the district's average unduplicated pupil counts for the fall and spring semesters for the then current fiscal year.

- Reallocation of Excess Revenues

56714. The superintendent shall adopt rules and regulations for the implementation of this chapter.

- Superintendent's Rules/Regulations

## Article 3. Instructional Personnel Services

- INSTRUCTIONAL PERSONNEL SERVICES

56720. The county superintendent shall compute, pursuant to this article, instructional personnel services amounts for each district and county office operating special education programs and services.

- County Superintendent Computes IPS Amounts

56721. Each district or county office shall submit to the county superintendent its 1979-80 average salaries and benefits paid for providing

- Average Salaries/Benefits Paid for Instructional Personnel special education services, based on the regular school year, for the following instructional personnel:

(a) Special class teachers.

(b) Resource specialists; or for entities that did not operate under the master plan during fiscal year 1979-80, learning disability group teachers; or for entities that operated partially under the master plan during fiscal year 1979-80, resource specialists, and learning disability group teachers.

(c) Certificated specialists providing designated instruction and services.

- Aides

(d) (1) Special education instructional aides for special classes and centers, and resource specialists.

(2) Average salaries and benefits for such aides for the purpose of this section only shall be the greater of the district's or county office's:

(A) Average salary and benefits for a full-time equivalent special education instructional aide based on the average number of hours actually worked per instructional aide per day.

(B) Average annual salaries and benefits for six hours of special education instructional aide time.

- Compute Unit Rate Based on 1979-80 Costs for Instructional Personnel Services

56722. For each district or county office, the county superintendent shall compute an instructional personnel cost unit rate based on the 1979-80 costs submitted pursuant to Section 56721 for each of the following instructional personnel services:

(a) Special classes and centers with one special class teacher, using the amount computed pursuant to subdivision (a) of Section 56721.

(b) Special classes and centers for the severely handicapped, as defined in Section 56030.5, with one special class teacher and one instructional aide, using the amounts computed pursuant to subdivisions (a) and (d) of Section 56721.

(c) Special classes and centers for the severely handicapped, as defined in Section 56030.5, with one special class teacher and two instructional aides, using the amounts computed pursuant to subdivisions (a) and (d) of Section 56721.

(d) Resource specialist programs with one resource specialist only, using the amount computed pursuant to subdivision (b) of Section 56721.

(e) Resource specialist programs with one resource specialist and one instructional aide, using the amounts computed pursuant to subdivision (b) of Section 56721 and 85 percent of the amount computed to subdivision (d) Section 56721.

(f) Certificated specialists providing designated instruction and services, using the amount computed pursuant to subdivision (c) of Section 56721. For the purpose of this subdivision, aides providing designated instruction and services may be funded in lieu of a certificated specialist.

(g) Special classes and centers for other than the severely handicapped with one special class teacher and one instructional aide using the amount computed pursuant to subdivision (a) and 85 percent of the amount computed pursuant to subdivision (d) of Section 56721.

(h) Special classes and centers for other than the severely handicapped with one special class teacher and two instructional aides using the amount computed pursuant to subdivision (a) and 85 percent of the amount computed pursuant to subdivision (d) of Section 56721.

- Inflation Factor

56723. For fiscal year 1980-81 the county superintendent shall multiply the unit rates computed pursuant to Section 56722 by 1.09. For fiscal year 1981-82, the unit rates shall be increased by 5 percent. For fiscal year 1983-84, the unit rates shall be increased by 8 percent. Commencing with fiscal year 1984-85 and each fiscal year thereafter, the unit rates shall be increased by the statewide average percentage inflation adjustment computed for revenue limits of school districts.

- Statewide Average Unit Rate

56724. In the event a district or county office claims special education allowances for an instructional personnel service it did not offer in 1979-80 and for which an instructional personnel cost unit rate was not computed, such district or county office shall use the statewide average unit rate for the then current fiscal year for that instructional personnel service.

- County Superintendent Multiplies Units

56725. For each of the instructional personnel services specified in Section 56722 for which funds have been budgeted pursuant to subdivision (e) of Section 56200, the county superintendent shall multiply the units of instructional personnel service computed pursuant to Section 56760 by the appropriate unit rate for the district or county office for the then current fiscal year.

- Extended Year Computation

56726. For each district and county office that operates an extended year program, which is required by statute, the following amount shall be computed:

- Special Classes/Non-severely Handicapped

(a) For special classes, excluding those funded under subdivision (b):

(1) Divide the number of days taught in extended session for special classes, not to exceed 30, by the number of days in the regular school year.

(2) Multiply the quotient computed pursuant to paragraph (1) by the unit rate computed pursuant to subdivision (g) of Section 56722, as adjusted pursuant to Section 56723, and multiply the product by 0.6.

(3) Divide the enrollment in special classes as of the second week of extended session by 11; round up to the nearest whole number; and multiply by the product computed pursuant to paragraph (2).

- Special Centers or Classes/ Severely Handicapped

(b) For special centers or classes for severely handicapped pupils, as defined in Section 56030.5:

(1) Divide the number of days taught in extended session for special classes or centers, not to exceed 55, by the number of days in the regular school year.

(2) Multiply the quotient computed pursuant to paragraph (1) by the unit rate computed pursuant to subdivision (c) of Section 56722, as adjusted pursuant to Section 56723.

(3) Divide the enrollment in special classes or centers as of the second week of extended session by 7; round up to the nearest whole number; and multiply by the product computed pursuant to paragraph (2).

- DIS in Special Classes

(c) For designated instruction and services for pupils in special classes during extended session:

(1) Divide the number of classes computed pursuant to paragraph (3) of subdivision (a) by 3 and multiply that amount by the product computed by multiplying the quotient computed pursuant to paragraph (1) of subdivision (a) by the unit rate computed pursuant to subdivision (f) of Section 56722, as adjusted pursuant to Section 56723.

(2) Divide the number of classes computed pursuant to paragraph (3) of subdivision (b) by 3 and multiply that amount by the product computed by multiplying the quotient computed pursuant to paragraph (1) of subdivision (b) by the unit rate computed pursuant to subdivision (f) of Section 56722, as adjusted pursuant to Section 56723.

(3) Multiply the amount computed pursuant to paragraph (1) by 0.6.

- County Superintendent Computes Sum

56727. The county superintendent shall compute the sum of the amounts computed pursuant to Sections 56725 and 56726.

- State Aid Shall Not Exceed Units Actually in Operation

56728. Notwithstanding subdivision (d) of Section 56760, state aid for instructional personnel service units operated during the regular school year and during extended year programs shall not exceed the number of units actually in operation for the then current fiscal year. Districts and county offices shall be entitled to the full unit rates computed pursuant to subdivisions (b), (c), (e), (g), and (h) of Section 56722 in regular year and extended year programs only if the appropriate number of instructional aides are actually used.

For the purposes of computing funding for aides other than those in classes for the severely handicapped, a full-time equivalent aide shall be equivalent to 1.00 times a full-time equivalent aide entitlement for those aides in the 1980-81 fiscal year.

- Full-time Equivalent Aide

56728.5. As a condition of receiving state aid pursuant to this chapter, a district or county office of education shall report in April of each year, on forms provided for this purpose by the Superintendent of Public Instruction, the count of the number of pupils receiving special education services provided by the district or county office in the spring semester. The report shall individually report the unduplicated count in special day classes, resource specialist programs, and designated instructional services, and shall distinguish between pupils residing in licensed children's institutions, foster family homes, residential medical facilities, other similar facilities, and all other pupils.

- April Unduplicated Pupil Count

The Superintendent of Public Instruction shall collect, as necessary, data from school districts, county offices of education, and other public and private agencies having information on licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities.

- Data Collection

56728.6. (a) Notwithstanding subdivision (d) of Section 56760, in the 1985-86 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to children three years of age or older at the second principal apportionment of the prior fiscal year, so long as the pupil count divided by the number of instructional personnel service units is equal to or greater than the following:

- Loading of Instructional Units for Growth

(1) For special classes and centers -- 9, based on the unduplicated pupil count.

(2) For resource specialist programs -- 21, based on the unduplicated pupil count.

(3) For designated instruction and services -- 20, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.

- Authorization for Additional Units

(b) Notwithstanding subdivision (d) of Section 56760, in the 1984-85 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of instructional personnel service units for services to children three years of age or older in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the Superintendent of Public Instruction.

(1) The superintendent shall not authorize additional units for a special education local plan area if, for that special education local plan area, the percentage of pupils in kindergarten and grades 1 through 12 enrolled in special education programs, excluding pupils less than three years of age, would exceed 10 percent.

(2) The superintendent shall not authorize additional units for a special education local plan area if, for that special education local plan area, the ratio of pupils in kindergarten and grades 1 through 12 receiving a specific instructional service, excluding pupils less than three years of age, would exceed the following:

(A) For special classes and centers - 0.028 percent.

(B) For resource specialist programs - 0.040 percent.

(C) For designated instruction services - 0.042 percent.

(3) The superintendent may authorize additional units for a special education local plan area only if the area's pupil-instructional personnel unit ratios, based on the unduplicated pupil count, meet or exceed the ratios specified in paragraphs (1), (2), and (3) of subdivision (a).

- Growth Criteria

(c) The Superintendent of Public Instruction shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional personnel service units, upon criteria which shall include, but not be limited to, all of the following:

(1) Changes in the total number of pupils enrolled in kindergarten and grades 1 through 12.

(2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.

(3) Lower than average and higher than average percentages of pupils in kindergarten and grades 1 through 12 who are currently enrolled in special education programs.

- Superintendent's Waivers

(d) A special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall consider the following:

(1) Pupil density of 25 or fewer units of average daily attendance per square mile in local plan areas of 30,000 or fewer average daily attendance, or pupil density of 20 or fewer units of average daily attendance per square mile in local plan areas of more than 30,000 average daily attendance.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

- Waiver of Standards

(e) For the purpose of this section, a special education local plan area may apply for, and the superintendent may grant, a waiver of the standards specified in paragraph (2) of subdivision (b) if the waiver is programmatically justified.

- Restrictions on Authorizing Growth Units

(f) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If such an appropriation is made, units authorized by the superintendent pursuant to this subdivision that result in an increase in the statewide total number of instructional personnel service units are subject to the following restrictions:

(1) The units shall be funded only by such appropriation and no other funds may be apportioned for the units.

(2) All units shall be fully funded pursuant to Chapter 7 (commencing with Section 56700) of Part 30.

- Operative Date

(g) This section shall become operative July 1, 1985.

- Loading of Instructional Units for Growth for Infant Programs

56728.8. (a) Notwithstanding subdivision (d) of Section 56760, for the 1985-86 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to individuals with exceptional needs younger than three years of age at the second principal apportionment of the prior fiscal year, so long as the pupil count of these pupils divided by the number of instructional personnel service units is not less than the following:

(1) For special classes and centers - 12, based on the unduplicated pupil count.

(2) For resource specialist programs - 24, based on the unduplicated pupil count.

- Authorization for Additional Units

(3) For designated instruction and services-12, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.

(b) Notwithstanding subdivision (d) of Section 56760, in the 1985-86 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of instructional personnel service units for services to individuals with exceptional needs younger than three years of age in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the Superintendent of Public Instruction.

- Growth Criteria

(c) The Superintendent of Public Instruction shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional personnel service units, upon criteria that shall include, but not be limited to, the following:

(1) Changes in the total number of pupils younger than three years of age enrolled in special education programs.

(2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.

- Two Aides for Special Classes/Centers

(d) Notwithstanding subdivision (e) of Section 56760, infant programs in special classes and centers funded pursuant to this item shall be supported by two aides, unless otherwise required by the Superintendent of Public Instruction.

- One Aide for Resource Specialist Program

(e) Infant services in resource specialist programs funded pursuant to this item shall be supported by one aide.

- Minimums

(f) In determining the number of instructional personnel service units for which a special education local plan area may qualify, a minimum of six infants shall constitute eligibility for the initial unit. However, programs operating pursuant to Section 56425 shall be allowed a minimum of one initial unit for the 1985-86 fiscal year. When units are allocated pursuant to this subdivision, the Superintendent of Public Instruction shall allocate only the least expensive unit appropriate.

- Partial Unit

(g) Beginning with the 1986-87 fiscal year, those programs operating pursuant to Section 56425 with fewer than six infants shall receive a partial unit, as determined by the Superintendent of Public Instruction.

- Superintendent's Waivers

(h) A special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall give priority to the following factors:

(1) Pupil density of 25 or fewer units of average daily attendance per square mile in local plan areas of 30,000 or fewer average daily attendance, or pupil density of 20 or fewer units of average daily attendance per square mile in local plan areas with an average daily attendance of more than 30,000.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, or similar facilities within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

- IPSU Restrictions

(i) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If such an appropriation is made, units authorized by the superintendent pursuant to this section are subject to the following restrictions:

(1) The units shall be funded only by such an appropriation and no other funds may be apportioned for the units.

(2) All units shall be fully funded pursuant to

Chapter 7 (commencing with Section 56700) of Part 30.

### Article 4. Support Services

- SUPPORT SERVICES

- County Superintendent Computes Support Services Amount

56730. The county superintendent shall compute, pursuant to this article, a support services amount for each district and county office operating special education programs and services pursuant to this article.

- Program Cost Accounting Procedures

56730.5. (a) For the 1985-86 fiscal year, the Superintendent of Public Instruction shall adopt and disseminate to all local education agencies, program cost accounting procedures that meet all of the following conditions:

(1) The procedures shall require all local education agencies to use the same methods of allocating direct support costs to specific programs.

(2) The methodology used to allocate direct support costs shall be readily supported by documentation or be the result of standards prescribed by the cost accounting procedures.

(3) For each category of support costs, a single allocation method shall be employed unless documentation as prescribed by the accounting procedures specified by the Superintendent of Public Instruction is available.

(b) Local education agencies shall be required to use the cost accounting procedures provided for under this section during the 1985-86 fiscal year, and to report their 1985-86 fiscal year costs to the State Department of Education using these procedures on forms prescribed by the Superintendent of Public Instruction.

- Study of Comparable Public/Nonpublic School Costs

56730.6. Within one year of the issuance of accounting standards and criteria pursuant to Section 56730.5, the Legislative Analyst and the Department of Finance shall review and comment upon the results of a study of comparable public and nonpublic school costs for services provided to individuals with exceptional needs to be conducted by the California Association of Private Special Education Schools.

- Submit Sum of Salaries and Benefits

56731. Each district and county office shall submit to the county superintendent the sum of salaries and benefits paid to instructional personnel, excluding substitute teachers, specified in Section 56721 for providing special education services, based on the regular school year, plus the sum of salaries and benefits paid to instructional personnel specified in Section 56721 for providing special education services for extended year programs during fiscal year 1979-80, plus the increase in salary and benefit costs for instructional aides associated with the unit rates computed pursuant to Article 3 (commencing with Section 56720) of this part.

- Submit Adjusted Operating Costs

56732. Each district and county office shall submit to the county superintendent the adjusted operating costs for special education in fiscal year 1979-80. Adjusted operating costs shall be computed by reducing the total cost for special education reported by the district or county superintendent for fiscal year 1979-80 less the costs of special transportation, services provided by nonpublic, nonsectarian schools, tuition paid to other school districts or county offices for special education programs and services during the 1979-80 fiscal year but not paid during the 1980-81 fiscal year, pregnant minors programs, programs to provide instruction in the home or hospital for pupils with temporary physical disabilities, and, if appropriate, regionalized services, as enumerated in subdivision (c) of Section 56220.

- Indirect Support Costs 4 Percent Cap

The amount included in the total cost of special education for indirect support costs shall not exceed 4 percent of the sum of direct costs plus direct support costs.

- County Superintendent Computes Support Services Ratio

56733. The county superintendent shall compute a support services quotient as follows:

(a) Subtract the sum computed pursuant to Section 56731 from the sum computed pursuant to Section 56732.

(b) Divide the amount computed pursuant to subdivision (a) by the sum computed pursuant to Section 56731.

- 1980-81 Support Services Computation

56734. The support services amounts to each district and county office for the 1980-81 fiscal year shall be the amount computed pursuant to Section 56727 multiplied by the quotient computed pursuant to Section 56733.

- Controller Audit of Support Services

56735. (a) The superintendent shall recommend for audit to the Controller districts or county offices whose 1979-80 fiscal year support services quotient exceeded 125 percent of the state average support services quotient, computed pursuant to subdivision (b), for comparably sized districts.

(b) The superintendent shall compute average support services quotients for the 1979-80 fiscal year for the following groups of districts. As used in this section, "average daily attendance" is the district's regular average daily attendance.

(1) Elementary districts of 100 or less units of average daily attendance.

(2) Elementary districts with more than 100 and less than 901 units of average daily attendance.

(3) High school districts with less than 301 units of average daily attendance.

(4) Unified districts with less than 1,501 units of average daily attendance.

(5) Elementary districts with greater than 900 units of average daily attendance.

(6) High school districts with more than 300 units of average daily attendance.

(7) Unified districts with greater than 1,500 units of average daily attendance.

(c) For purposes of this section, county offices shall be treated as districts within the meaning of paragraph (7) of subdivision (b).

(d) In addition to the audits specified in subdivision (a), the Controller may select a representative cross-section of districts to audit.

(e) The Controller may review the criteria for identifying special education costs to be issued pursuant to Section 56730.5, and make recommendations in their audit report.

- Adjusted Operating Costs Exclude Regionalized Services Costs

56736. It is the intent of the Legislature that the adjusted operating costs for special education as computed pursuant to Section 56732 exclude all costs associated with the services enumerated in subdivision (c) of Section 56220 regardless of whether the district or county office operated under the Master Plan for Special Education during the 1979-80 fiscal year and regardless of whether the district or county office received special funding for these services. The Superintendent of Public Instruction shall:

- Identify Regionalized Services Costs

(a) Identify the costs associated with the services enumerated in subdivision (c) of Section 56220 for all districts and county offices during the 1979-80 fiscal year.

- Recompute Support Services Ratio, Minus Regionalized Services Costs, Not to Exceed $93 Per Pupil

(b) Recompute the support services quotients for districts and county offices, excluding the costs identified in subdivision (a) from the computation, not to exceed ninety-three dollars ($93) per unduplicated pupil count.

56737. For the 1981-82 fiscal year and for each fiscal year thereafter, the Superintendent of Public Instruction shall:

- Support Services Ratio Squeeze

(a) Compute the statewide unweighted average of the support services quotients computed pursuant to Section 56736, for the 1980-81 fiscal year.

- Nonseverely Handicapped Support Services Ratio

(b) Compute a support services quotient for each district and county office claiming reimbursement pursuant to this chapter for the then current fiscal year for instructional personnel services units, other than for the severely handicapped, as defined in Section 56030.5, in the following manner:

- Greater Than 150 Percent Statewide Average

(1) If the support services quotient for the prior fiscal year is greater than 1.5 times the average quotient computed pursuant to subdivision (a), then the quotient for the current fiscal year shall be 1.5 times the average quotient computed pursuant to subdivision (a).

- Equal to or Below 150 Percent Statewide Average

(2) If the support services quotient for the prior fiscal year is less than or equal to 1.5 times the average quotient computed pursuant to subdivision (a) but greater than the average quotient computed pursuant to subdivision (a), then the quotient for the then current fiscal year shall be the greater of (A) or (B):

(A) The average computed pursuant to subdivision (a).

(B) The support services quotient for the prior fiscal year minus 0.1.

- Less Than or Equal to Statewide Average

(3) If the support services quotient for the prior fiscal year is less than or equal to the average quotient computed pursuant to subdivision (a), then the quotient for the then current fiscal year shall be equal to the quotient for the prior fiscal year.

- Average Ratio

(4) If a district or county office did not operate special education programs and services in the fiscal year, its support services quotient for the then current fiscal year shall be the lesser of (A) or (B).

(A) The average quotient computed pursuant to subdivision (a).

(B) The statewide unweighted average for the appropriate class district or county office identified in Section 56735.

- Severely Handicapped Support Services Ratio Shall Not Exceed 150 Percent of Statewide Average

(c) The support services quotient for special day class instructional personnel services units for the severely handicapped, as defined in Section 56030.5, shall be the quotient for the prior fiscal year, except that that quotient shall not exceed 1.5 times the average quotient computed pursuant to subdivision (a).

- Nonseverely Handicapped Support Services Ratio Reduced to 115 Percent of Statewide Average

(d) No district or county office which had a nonseverely handicapped support services ratio of 1.5 times the average in the 1981-82 fiscal year shall have that average reduced below 1.15 times the average in subsequent years.

- Compute Total Support Services Amount

(e) Compute a total support services amount for each district and county office equal to the sum of (1) and (2):

(1) Multiply the support services quotient for the current fiscal year computed pursuant to subdivision (b) or (c) by the instructional amounts for the appropriate types of programs, computed pursuant to Section 56725.

- Extended Year Nonseverely Handicapped Support

- Services Amounts Reduced by 50 Percent

(2) Multiply the support services quotient for the current fiscal year computed pursuant to subdivision (b) by the extended year amount computed pursuant to Section 56726. Support services amounts for extended year programs for other than the severely handicapped, as defined in Section 56030.5, shall be divided by 2.

- Fifty Percent Growth Limitation for IPSU/DIS Support Services

56738. Notwithstanding Section 56737, the support services amounts for the following instructional personnel services units shall be one-half of the amounts computed for those units pursuant to Section 56737:

(a) All instructional personnel services units added between the end of the first principal apportionment period and the end of the second principal apportionment period during a single fiscal year.

(b) Any designated instruction and services units in excess of the number of those units operated during the 1980-81 fiscal year.

- Legislative Intent for Expenditure of Funds for Specialized Books, Materials, and Equipment

56739. (a) When allocating funds received for special education pursuant to this article, it is the intent of the Legislature that, to the extent funding is available, school districts and county offices shall give first priority to expenditures to provide specialized books, materials, and equipment which are necessary and appropriate for the individualized education programs of pupils with low-incidence disabilities, up to a maximum of five hundred dollars ($500) per pupil with low-incidence disability. Nothing in this subdivision shall be construed to prohibit pooling the prioritized funds to purchase equipment to be shared by several pupils.

(b) Equipment purchased pursuant to this section shall include, but not necessarily be limited to, nonprescriptive equipment, sensory aids, and other equipment and materials as appropriate.

## Article 5. Nonpublic, Nonsectarian School Services

- NONPUBLIC, NONSECTARIAN SCHOOL SERVICES

- Seventy Percent Excess Cost

56740. The superintendent shall apportion to each district and county office 70 percent of the cost of tuition in excess of the revenue limit and applicable federal funds for pupils enrolled in nonpublic, nonsectarian schools pursuant to Sections 56365 and 56366.

- Nonpublic School Program Placement Costs Data

56741. As a condition to receiving an apportionment pursuant to Section 56740, together with other financial reports required by the superintendent for purposes of apportioning funds, a district or county office shall submit an annual report to the superintendent, on forms provided by the superintendent for that purpose, which shall include all of the following information:

(a) The individual contracted program placement costs of providing special education, transportation, residential, and designated instructional services to individuals with exceptional needs placed in nonpublic, nonsectarian schools pursuant to Sections 56365 and 56366.

(b) The individual program placement costs specified in subdivision (a) shall be listed according to the placement categories of individuals with exceptional needs, including, but not limited to, all of the following categories:

(1) Full-day placement.
(2) Partial-day placement.
(3) Residential placement within the state.
(4) Residential placement outside the state.

- Report Nonpublic School Cost Exceeding More Than 100 Percent Average Cost

56742. Every district or county office of education which receives state funding pursuant to Section 56740 shall, as a condition of that apportionment, report to the Superintendent of Public Instruction on forms provided for that purpose, when the total cost of a placement of an individual with exceptional needs in a nonpublic, nonsectarian school exceeds by more than 100 percent the average cost, both instructional and support, including transportation and designated instructional services, of serving a pupil in a special day class in the district or county office. If the district or county office does not operate special day classes, then the figure used shall be the average special day class cost, both instructional and support, in the region.

The report shall include:

(a) The name of the nonpublic, nonsectarian school in which the individual with exceptional needs is placed.

(b) A brief description of the services provided to that individual.

(c) The total costs of the placement for that individual.

- Nonpublic School Cost Increases Exceeding Inflation Factor

56743. Notwithstanding Section 56740, the Superintendent of Public Instruction shall not apportion additional funds to districts or county offices on behalf of those placements reported by districts and county offices pursuant to Section 56742 if the increase claimed from one year to the next exceeds the percentage increase specified by Section 56723, or an in-lieu percentage specified by the Budget Act, unless he or she makes a specific and individual finding that a greater increase is warranted.

### Article 6. Local General Fund Contribution

- LOCAL GENERAL FUND CONTRIBUTION

56750. The county superintendent shall compute, pursuant to this article, a local general fund contribution for special education for each district operating special education programs and services.

- Computation by County Superintendent

56751. The county superintendent shall compute an adjusted local general fund contribution amount for each district by subtracting the amount computed pursuant to subdivision (a) from the amount computed pursuant to subdivision (b).

- Method of Computation

(a) The sum of the district's state aid apportionments for special education, applicable federal funds, revenue limits for pupils in special classes and centers, and tuition earned by the district from operating special education programs for other districts and county offices, exclusive of such revenue earned for providing special transportation, contracting for nonpublic, nonsectarian school services, and earned on account of pregnant minors programs and programs to provide instruction in the home or hospital for pupils with temporary physical disabilities for the 1979-80 fiscal year.

(b) The district's total reported cost of operating special education programs and services exclusive of the costs of providing special transportation, contracting for nonpublic, nonsectarian school services, and providing pregnant minors programs and instruction in the home or hospital for pupils with temporary physical disabilities for the 1979-80 fiscal year.

The amount included in total cost of special education for indirect support costs shall not exceed 4 percent of the sum of direct costs plus direct support costs.

- Indirect Support Costs Limitation

56752. The amount computed pursuant to Section 56751 shall be divided by such district's second principal apportionment regular average daily attendance in the 1979-80 fiscal year.

- ADA Adjustments for Fiscal Year 1979-80

- ADA Adjustment for Current Fiscal Year

56753. The amount computed pursuant to Section 56752 shall be multiplied by the second principal apportionment regular average daily attendance of such district for the then current fiscal year.

- Local General Fund Contribution

56754. The local general fund contribution for each district shall be the lesser of the amounts computed pursuant to Section 56751 or Section 56753.

## Article 7. Service Proportions

- SERVICE PROPORTIONS

- Annual Budget Plan Compliance

56760. The annual budget plan, required by subdivision (e) of Section 56200, shall comply with the following proportions, unless a waiver is granted by the superintendent pursuant to Section 56761:

(a) The district, special education local plan area, or county office, shall estimate the pupils to be served in the subsequent fiscal year by instructional personnel service. The estimate shall be computed as the ratio of pupils to be served by instructional personnel service to the enrollment of pupils in kindergarten and grades 1 to 12, inclusive, of the districts and county offices participating in the plan.

- Funded Ratio Not to Exceed 10 Percent

(1) The ratio of pupils funded by the state by instructional personnel service during the regular school year, including pupils for whom education and services are provided for by contract with nonpublic, nonsectarian schools, to the enrollment in kindergarten and grades 1 to 12, inclusive, shall not exceed 0.10.

- Specific Instructional Service Ratio Caps

(2) The ratio of pupils funded by the state by instructional personnel service to the enrollment in kindergarten and grades 1 to 12, inclusive, receiving a specific instructional service shall not exceed the following:

(A) For special classes and centers, 0.028.
(B) For resource specialist programs, 0.040.
(C) For designated instruction services, 0.042.

- Divide Amounts by Appropriate Computed Ratios

(b) The district, special education local plan area, or county office shall divide the amounts in paragraphs (1), (2), and (3) by the appropriate ratios computed pursuant to paragraph (2) of subdivision (a).

(1) For special classes and centers, 10 pupils.
(2) For resource specialist programs, 24 pupils.
(3) For designated instruction and services, 24 pupils.

- Divide Sum of Estimated Enrollments

(c) The district, special education local plan area, or county office shall divide the sum of the estimated enrollments on October 1 of the subsequent fiscal year in kindergarten and grades 1 to 12, inclusive, of each district and county office participating in the plan by each of the amounts computed pursuant to paragraphs (1), (2), and (3) of subdivision (b).

- Authorized IPSUs State Will Fund

(d) The amounts computed pursuant to subdivision (c) shall be the authorized instructional personnel service units the state will fund for the district, special education local plan area, or county office in the then current year. The allocation of these instructional personnel service units shall be described in the annual budget plan.

- Special Class/Center Average: 1 Teacher to 1.05 Aide

(e) The number of units of instructional services funded pursuant to this article for a local plan shall not exceed for special classes and centers, an average of one teacher and 1.05 aide per special class or center actually operated.

- State Superintendent's Waivers of Service Proportions

56761. (a) A district, special education local plan area, or county office may request, and the superintendent may waive, any of the proportions specified in Section 56760. The waiver shall be granted only if compliance would both prevent the provision of a free, appropriate public education and would create undue hardship, as follows:

- Special Classes/Center

(1) For special classes and centers: proximity of the district, special education local plan area, or county office to state hospitals, licensed children's institutions, foster care facilities, or other facility may increase the expected numbers of individuals with exceptional needs requiring placement in special classes and centers.

- Resource Specialist Program/DIS

(2) For resource specialist programs and designated instruction and services: the district, special education local plan area, or county office has implemented the eligibility criteria adopted by the board, and failure to grant the waiver may result in eligible pupils receiving inappropriate services.

- Proportions

(3) For the proportions specified in subdivision (b) of Section 56760: low pupil density in sparsely populated areas creates problems of distance and inaccessibility for the district, special education local plan area, or county office.

- Request to Waive Maximum Unit Proportions

(b) A school district, special education local plan area, or county office may request the superintendent to waive one or more of the maximum unit proportions set forth in Section 56760. The request shall be granted only if it demonstrates that the increased cost of exceeding the standard in one instructional setting is offset by savings in another instructional setting.

56762. The superintendent shall adopt rules and regulations to ensure that apportionments made pursuant to this chapter shall be paid on account of no more than 10 percent of the statewide enrollment in kindergarten and grades 1 to 12, inclusive, for the then current fiscal year.

- Superintendent's Rules/ Regulations - 10 Percent Statewide Enrollment

## Article 8. Low Incidence Funding

- LOW INCIDENCE FUNDING

56771. (a) Commencing with the 1985-86 fiscal year, and for each fiscal year thereafter, funds to support specialized books, materials, and equipment as required under the individualized education program for each pupil with low incidence disabilities, as defined in Section 56026.5, shall be determined by dividing the total number of pupils with low incidence disabilities in the state, as reported on December 1 of the prior fiscal year, into the annual appropriation provided for this purpose in the Budget Act.

- Funding Formula

(b) The per-pupil entitlement determined pursuant to subdivision (a) shall be multiplied by the number of pupils with low incidence disabilities in each special education local plan area to determine the total funds available for each local plan.

(c) The superintendent shall apportion the amount determined pursuant to subdivision (b) to the responsible local agency in the special education local plan area for purposes of purchasing and coordinating the use of specialized books, materials, and equipment.

- Apportion Funds to Responsible Local Agency

(d) As a condition of receiving these funds, the responsible local agency shall ensure that the appropriate books, materials, and equipment are purchased, that the use of equipment is coordinated as necessary, and that the books, materials, and equipment are reassigned to local educational agencies within the special education local plan area once the agency that originally received the books, materials, and equipment no longer needs them.

- Funding Condition

(e) It is the intent of the Legislature that special education local plan areas share unused specialized books, materials, and equipment with neighboring special education local plan areas.

- Share Unused Books, Materials, and Equipment

## Article 8.5. Licensed Children's Institutions

- LICENSED CHILDREN'S INSTITUTIONS

56775. For the 1980-81 fiscal year and for each fiscal year thereafter, the superintendent shall

- Excess Cost for Nonpublic School Placements apportion to each district and county superintendent providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 an amount equal to the difference, if any, between (1) the costs of contracts with nonpublic, nonsectarian schools to provide special education instruction, related services, or both, to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities funded under this chapter, and (2) the state and federal income received by the district or county superintendent for providing these programs. The sum of the excess cost, plus any state or federal income for these programs, shall not exceed the cost of contracts with nonpublic nonsectarian schools to provide special education and related services for these pupils, as determined by the superintendent.

- Reimbursement for Assessment - Identification Costs - Nonpublic School Placements

56775.5. The Superintendent of Public Instruction may reimburse each district and county office of education providing programs pursuant to Article 5 (commencing with Section 56155 of Chapter 2 for assessment and identification costs for pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities who are placed in state-certified nonpublic, nonsectarian schools.

Actual costs under this section shall not include either administrative or indirect costs, or any proration of support costs.

The total amount reimbursed statewide under this section shall not exceed the amount appropriated for these purposes in any fiscal year. If the superintendent determines that this amount is insufficient to reimburse all claims, the superintendent shall prorate the deficiency among all districts or county offices submitting claims.

- Emergency Fund

56776. (a) The superintendent shall establish and maintain an emergency fund for the purpose of providing relief to special education local plan areas when a licensed children's institution, foster family home, residential medical facility, or other similar facility serving individuals with exceptional needs opens or expands in a special education local plan area during the course of the school year which impacts the special education local plan area, or when a pupil is placed in a facility for which no public or state-certified nonpublic program exists within the special education local plan area in which the pupil's individualized education program can be implemented during the course of the school year and impacts the educational program.

- Written Request Requirements

(b) The special education local plan area in which the impaction occurs shall be responsible for submitting a written request to the superintendent for emergency instructional personnel units. The written request shall, at a minimum, contain all of the following:

(1) Specific information on the new or expanded licensed children's institution, foster family home, residential medical facility, or other similar facility described in subdivision (a), including information on the new unserved or underserved pupils residing in the facility, or specific information relating to the new unserved or underserved pupils residing in those facilities.

(2) The identification of the steps undertaken demonstrating that no public special education program exists with the special education local plan area capable of programmatically meeting the needs of identified pupils.

(3) A plan from the special education local plan area describing the services to be provided.

(4) A description of the number of emergency instructional personnel service units requested and their specific uses.

- Superintendent Shall Act Within 30 Days

(c) The superintendent shall approve, modify, or disapprove the written request for emergency instructional personnel service units within 30 days of the receipt of the written request and shall notify the special education local plan area administrator, in writing, of the final decision.

(d) It is the intent of the Legislature that appropriations necessary to fund these emergency instructional personnel service units shall be included in the Budget Act for each fiscal year.

- Permanent Funding Priority

56777. In the 1986-87 fiscal year and each fiscal year thereafter, the superintendent shall determine the need in that fiscal year for the purposes for which funding was provided in the prior fiscal year pursuant to Section 56776.

If the need still exists in the current fiscal year, the permanent funding of the need shall be the first priority in the allocation of the instructional personnel service units from any appropriation for growth in instructional personnel service units, or from instructional personnel service units that were released by another special education local plan area pursuant to subdivision (a) of Section 56728.6. In the event that permanent funding for these units is not available in the current year, the units shall receive first priority for funding pursuant to Section 56776.

## Article 9. Program Specialists and Regionalized Services

- PROGRAM SPECIALISTS AND REGIONALIZED SERVICES

- Regionalized Services

56780. (a) Funds for regionalized services shall be apportioned to the administrative agency of special education local plan areas. As a condition of receiving funds for regionalized services, the administrative agency shall assure that all functions listed below are performed in accordance with the governance structure of the special education local plan area.

(1) Coordination of the special education local plan area.

(2) Coordinated system of identification and assessment.

(3) Coordinated system of procedural safeguards.

(4) Coordinated system of personnel development.

(5) Coordinated system of curriculum development.

(6) Coordinated system of internal program review.

(7) Coordinated system of data collection and management.

(8) Coordinated system of evaluation of the effectiveness of the local plan.

(9) Coordination of interagency agreements.

(10) Coordination of services to medical facilities.

(11) Coordination of services to licensed children's institutions and foster homes.

(12) Preparation of special education local plan area reports.

(13) Incidental expenses of the community advisory committee.

(14) Coordination of transportation.

(15) Coordination of career and vocational education.

(16) Assurance of full educational opportunity.

(b) Direct instructional support may be provided by program specialists in accordance with Section 56368.

- Formula for 1982-83 and Thereafter

56781. (a) Commencing with the 1982-83 fiscal year and each fiscal year thereafter, the superintendent shall multiply the average of the unduplicated pupil counts for the fall and spring semesters of the then current fiscal year, not to exceed 10 percent of the enrollment in kindergarten and grades 1 to 12, inclusive, in the local plan, by forty-four dollars ($44), as adjusted pursuant to Section 56782.

- $44 per Unduplicated Count

- Optional Use of Funds

(b) Funds received pursuant to this section shall be expended only for the following purposes:

(1) Program specialists.

(2) Regionalized services as defined pursuant to subdivision (c) of Section 56220.

(3) Instructional personnel services units in excess of those funded pursuant to Article 2 (commencing with Section 56710) of Chapter 7. Units funded pursuant to this section shall not be considered part of the base number of units funded or operated for any district, county office, or local plan area for the purposes of the growth tests specified in Section 56728.6.

- Regionalized Services Apportionment

- $25 per Unduplicated Count

56782. For the 1981-82 fiscal year, and for each fiscal year thereafter, the superintendent shall apportion funds for regionalized services, other than program specialists, as enumerated in subdivision (c) of Section 56220 by multiplying the average of the total unduplicated counts for the fall and spring semesters of the then current fiscal year in the local plan, not to exceed 10 percent of the enrollment in kindergarten and grades 1 to 12, inclusive, in the local plan, by twenty-five dollars ($25).

- Annual Inflation Adjustment for Program Specialists and Regionalized Services

56783. For fiscal year 1983-84, the amounts per unduplicated pupil provided pursuant to Sections 56781 and 56782 shall be increased by 8 percent. Commencing with the 1984-85 fiscal year and in each fiscal year thereafter, the amounts per unduplicated pupil provided pursuant to Sections 56781 and 56782 shall be increased annually by the statewide average percentage inflation adjustment computed for revenue limits of school districts.

## Article 10. Deficit Funding

- DEFICIT FUNDING
  - Insufficient Funds
  - Deficits Applied Equally to All Apportionments
  - Local Plan Available Funds Allocated on Pro-Rata Basis

56790. If available funds are insufficient to permit full apportionments, the deficit shall be applied pursuant to this chapter.

56791. If state funds are insufficient to fully fund programs, the deficit shall be applied equally to all apportionments to all districts and county offices.

56792. If programs operated in accordance with a locally approved budget plan submitted pursuant to subdivision (e) of Section 56200 are in excess of those that are funded pursuant to Article 2 (commencing with Section 56710), Article 8 (commencing with Section 56770), and Article 9 (commencing with Section 56780), available funds shall be allocated by the superintendent on a pro-rata basis against all claims for funds by districts and county offices operating under that local plan, unless the plan specifies an alternative allocation mechanism.

## Article 12. General Provisions

- GENERAL PROVISIONS

- Design and Location of Facilities

56820. Any facilities constructed or leased after July 1, 1981, for individuals with exceptional needs shall be designed and, if possible, located to achieve maximum possible interaction between individuals with exceptional needs and other pupils.

- Funds for Apportionments/Administration

56821. The department shall include in its budget sufficient funds to make apportionments under this part and an amount sufficient for the administration by the department of the provisions of this part.

- Special Instructional Materials

56822. Sound recordings, large type, and braille books purchased, instructional materials transcribed from regular print into special media, and special supplies and equipment purchased for individuals with exceptional needs for which state or federal funds were allowed are property of the state and shall be available for use by individuals with exceptional needs throughout the state as the board shall provide.

- Apportionments Made as Early as Practicable

56823. Apportionments under this part shall be made by the superintendent as early as practicable in the fiscal year. Upon order of the superintendent, the State Controller shall draw warrants upon the money appropriated, in favor of the eligible districts or counties in the amounts ordered.

- Comparability of Local Support/Fiscal Effort

56824. Each district, special education local plan area, and county office participating in special education programs pursuant to this part shall maintain a fiscal effort with respect to each pupil participating in special education programs that is no less than the fiscal effort of the district or county office per elementary, intermediate, or secondary pupil not participating in a special education program. The department shall annually review individual district and county office expenditures to assure the comparability of local support. This review shall be based on rules and regulations adopted by the board which take into account growth in district enrollment and increases in district costs.

- Monitor and Review by State Department of Education

56825. The department shall continuously monitor and review all special education programs approved under this part to assure that all funds appropriated to districts, special education local plan areas, and county offices under this part are expended for the purposes intended.

- Funds Expended Exclusively for Special Education Programs

56826. Funds apportioned to districts, special education local plan areas, and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.

- State Superintendent's Review of Information/ Calculation

56827. The Superintendent of Public Instruction shall review the information and calculations submitted by districts and county offices in support of all apportionment computations described in this chapter. The review shall be conducted on the data submitted during the initial year of apportionment and for the three succeeding fiscal years only. Adjustments to any year's apportionment shall be received by the superintendent from the district or county office prior to the end of the third fiscal year following the fiscal year to be adjusted. The superintendent shall consider and adjust only the information and computational factors originally established during an eligible fiscal year, if the superintendent's review determines that they are correct.

- Adjustments

- Transfer of Programs

56828. (a) No educational programs already in operation in school districts pursuant to Part 30 (commencing with Section 56000) shall be transferred to the county superintendent of schools, or to other school districts, or from the county superintendent of schools to school districts, without the approval of the Superintendent of Public Instruction, if the transfer would result in an entitlement to increased state aid pursuant to this chapter.

- State Superintendent's Approval

(b) In the event the transfer is approved, the support services amounts and instructional personnel service units amounts for the transferring agencies and county superintendent of schools shall be computed using a weighted average. The Superintendent of Public Instruction shall determine the additional costs to the state, if any, caused by the transfer, and permanently reduce the districts' revenue limits, or the county superintendent's support services entitlement, or both the districts' revenue limits and the county superintendent's support services entitlement, by an amount equal to the additional cost.

- State Superintendent Determines Additional Cost to State

- Reduction of Revenue Limits/Support Services Entitlement

- Transfer of Programs for Severely Handicapped Pupils

(c) Educational programs for severely handicapped pupils, or any part of those programs, already in operation in school districts pursuant to Part 30 (commencing with Section 56000) may be transferred to the county superintendent of schools, or to other school districts, or from the county superintendent of schools to school districts, upon agreement of the agencies involved in the transfer, if the transfer would not result in an entitlement of increased state aid pursuant to this chapter. If an educational program for severely handicapped pupils, or any part of the program, is transferred, and if the support service ratio for severely handicapped classes of the transferring school district or county office of education is higher than that of the receiving district or county office, the support service ratio for the transferring district or county office shall be transferred to the receiving district or county office. If the transferred support service ratio would result in an entitlement of increased state aid, the Superintendent of Public Instruction shall calculate a lower support service ratio for the receiving district or county office, and shall apply the lower calculated ratio to the receiving district or county office operating the program. The transferred ratio shall thereafter become the support service ratio for severely handicapped classes for the district or the county operating the transferred program.

- Appropriations Greater Than Claims

56829. For the 1981-82 fiscal year and each fiscal year thereafter, if the total amount of state aid for special education claimed by districts and county offices pursuant to this chapter is less than the amount appropriated for those claims, the balance may be used by the Superintendent of Public Instruction to reimburse districts and county offices of education whose expenditures for special education programs and services in the current year exceed the sum of current year revenues from all sources, including state and federal aid for special education district revenue limits for special day classes and centers, county taxes for special education, and an amount equal to the 1979-80 local general fund contribution.

- Use of Balance

- Reimbursement Shall Not Exceed Actual Expenditures

The sum of the reimbursement received by districts and county offices pursuant to this section plus the total current year revenues received, including state and federal aid for special education, district revenue limits for special day classes and centers, county taxes for special education, and an amount equal to the 1979-80 local general fund contribution, shall not exceed the actual expenditures of the district or county office for special education programs and services.

- Annual Deficiencies

56830. (a) The Legislature hereby finds and declares that, since the 1980-81 fiscal year, there have been significant annual deficiencies in special education funding that have created fiscal hardships for many school districts and county offices of education and adversely impacted the quality of services to many individuals with exceptional needs, in abrogation of the objectives set forth in Section 56000.

- Legislative Intent Regarding Budget Augmentations

(b) It is the intent of the Legislature that the sum of at least fifty-five million dollars ($55,000,000) be appropriated in the Budget Act for the 1986-87 fiscal year, and at least one hundred fifteen million dollars ($115,000,000) be appropriated in the Budget Act for the 1987-88 fiscal year, in excess of the appropriations and cost-of-living adjustments for the 1985-86 fiscal year, to support programs for individuals with exceptional needs.

- Priorities for 1986-87

(1) Priority for appropriation of these funds in the 1986-87 fiscal year shall be accorded to programs that directly improve special education program quality, including, but not limited to, the restoration of instructional aide time in special day classes for nonseverely handicapped students, and in the resource specialist program to the level originally required by this part; further expansion of infant services and vocational programs; growth in low incidence funds; and additional growth in the number of instructional personnel service units.

- 1987-88 Considerations

(2) Based on the cost accounting information produced pursuant to Section 56730.5, consideration shall also be given in the 1987-88 fiscal year to revision of support services ratios, funding of the local general fund contribution computed pursuant to Section 56751 or 56753, and the expansion of low incidence funding to include specialized services, as appropriate, in addition to specialized materials and equipment.

## CHAPTER 8. SPECIAL EDUCATION PROGRAMS FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS RESIDING IN STATE HOSPITALS

- SPECIAL EDUCATION PROGRAMS IN STATE HOSPITALS

- Legislative Intent

56850. The purpose of the Legislature in enacting this chapter is to recognize that individuals with exceptional needs of mandated school age, residing in California's state hospitals for the developmentally disabled and mentally disordered, are entitled to, under Public Law 94-142, the federal Education for All Handicapped Children Act of 1975, and Public Law 93-112, the federal Rehabilitation Act of 1973, the same access to educational programs as is provided for individuals with exceptional needs residing in our communities.

- Equal Access to Educational Programs

- Ensure Services in Community

It is the intent of the Legislature to ensure that services shall be provided in the community near the individual state hospitals to the maximum extent appropriate, and in the least restrictive environment.

- Full Continuum of Educational Services

It is the further intent of the Legislature to ensure equal access to the educational process and to a full continuum of educational services for all individuals, regardless of their physical residence.

- No Reduction in Services for Others

It is the further intent of the Legislature that educational services designated for state hospital residents not eligible for services mandated by Public Law 94-142 shall not be reduced or limited in any manner as a result of the enactment of this chapter.

It is the further intent of the Legislature that any cooperative agreements to provide educational services for state hospitals shall seek to maximize federal financial participation in funding such services.

- Maximize Federal Funding

- Representative on Hospital's Interdisciplinary Team

56851. (a) In developing the individualized educational program for an individual residing in a state hospital who is eligible for services under Public Law 94-142, a state hospital shall include on its interdisciplinary team a representative of the district, or special education local plan area, or county office in which the state hospital is located, and the individual's state hospital teacher, depending on whether the state hospital is otherwise working with the district, special education local plan area, or county office for the provision of special education programs and related services to individuals with exceptional needs residing in state hospitals. However, if a district or special education local plan area that is required by this section to provide a representative from the district or special education local plan area does not do so, the county office shall provide a representative.

- State Hospital Reimburses

(b) The state hospital shall reimburse the district, special education local plan area, or the county office, as the case may be, for the costs, including salary, of providing the representative.

- Reviewing and Revising IEP

(c) Once the individual is enrolled in the community program, the educational agency providing special education shall be responsible for reviewing and revising the individualized education program with the participation of a representative of the state hospital and the parent. The agency responsible for the individualized education program shall be responsible for all individual protections, including notification and due process.

- State Hospital Shall Comply with Federal/State Laws and Regulations

56852. In developing the individualized educational program and providing all special education programs and related services to individuals with exceptional needs residing in the state hospitals, the state hospitals shall comply with the requirements of Public Law 94-142, Public Law 93-112, and special education provisions of this part and implementing regulations. Special education and related services shall be provided to each individual residing in a state hospital pursuant to the individualized education program for that individual.

- Department of Education Reviews Appropriateness

56852.5. The State Department of Education, within its existing program review process, shall specifically review the appropriateness of pupil placement for educational services as designated in the pupil's individualized education program and the criteria used in determining such placement.

- Department of Developmental Services/Mental Health Authority/Responsibility

56853. Nothing contained in this chapter shall affect the continued authority of the State Departments of Developmental Services and Mental Health over educational programs for individuals not eligible for services under Public Law 94-142, nor shall it affect the overall responsibility of the state hospitals for the care, treatment, and safety of individuals with exceptional needs under their control. The state hospitals shall continue to render appropriate and necessary developmental services, health related services, psychiatric services, and related services assigned to the state hospitals in the local written agreements, as part of their responsibilities of the care and treatment of state hospital residents.

- State Hospital Services

- Health-Related Services

Health related services shall include services provided by physicians, psychiatrists, psychologists, audiologists, registered nurses, social workers, physical therapists, occupational therapists, psychiatric technicians, and developmental specialists, and shall be the responsibility of the state hospital if the individual with exceptional needs requires these services while in the community program.

- State Interagency Agreements

56854. (a) The Superintendent of Public Instruction and the Directors of the State Departments of Developmental Services and Mental Health shall develop written interagency agreements to carry out the purposes of this chapter.

- Local Written Agreements

(b) For each county in which a state hospital is located, the county superintendent of schools, with the approval of the county board of education and the administrator of the state hospital, shall develop a local written agreement to carry out the purposes of this chapter. Such agreements shall be reviewed and updated annually and may be modified at any time with the concurrence of both parties to the agreements.

- Duty of County Superintendent to Ensure Availability of Services in Community for Which State Hospital Can Contract

56855. For each county in which a state hospital is located the county superintendent of schools shall ensure that appropriate special education and related services are available in the community for which the state hospitals can contract. Such contract shall provide for any eligible individual with exceptional needs residing in the state hospitals whose individualized education program specifies that educational services for that individual should be most appropriately provided, in whole or in part, in a program other than on the hospital grounds. The county board of education shall approve any programs operated by the county superintendent pursuant to this chapter.

- Contracts by Departments of Developmental Services/ Mental Health

56856. In order to provide appropriate special education and related services to an individual residing in a state hospital, the State Departments of Developmental Services and Mental Health shall contract with a county superintendent of schools, nonpublic, nonsectarian school, or other agency to provide all or part of the services that the individual's individualized education program indicates should be provided in a program other than on state hospital grounds. A contract between a state hospital and a nonpublic, nonsectarian school shall only be entered into when no appropriate public education program is available.

- Contracting for Services on State Hospital Grounds

56857. Nothing in this chapter shall preclude the State Departments of Developmental Services and Mental Health from contracting with a local public education agency, a nonpublic, nonsectarian school, or another agency to provide special education and related services on the state hospital grounds for those pupils whose individualized education programs do not indicate that such education and services should be provided in a program other than on state hospital grounds. These contracts shall not involve funds appropriated for purposes of community-based special education.

- 1982-83: Begin Orderly Transfer to Community Schools

56857.5. (a) Commencing with the 1982-83 fiscal year, community school agencies providing school programs on state hospital grounds shall begin the orderly transfer of all state hospital pupils whose individualized education programs indicate that a community school program is appropriate, to schools located in the community.

- Contracting Provisions Apply Only to Pupils Being Served in Community Schools

(b) Commencing with the 1983-84 fiscal year, all pupils covered by subdivision (a) shall be served in community schools other than on state hospital grounds, and the contracting provisions of this chapter shall apply only to pupils in community school programs other than on state hospital grounds.

- Waiver Provision

(c) Waivers to subdivisions (a) and (b) may be granted only when approved by both the State Superintendent of Public Instruction and the Director of the State Department of Developmental Services.

- Contract Payments

56858. (a) The State Department of Developmental Services shall, commencing August 1, 1985, and on the first day of each month thereafter, upon submission of an invoice by the county superintendent of schools, pay to the county superintendent of schools 8 percent of the amount projected to cover the cost of hospital pupils education in community school programs.

(b) The amount projected to cover the cost of hospital pupils educated in community school programs shall be determined according to procedures agreed by the State Department of Developmental Services and the State Department of Education.

(c) Upon completion of the fiscal year, the county superintendent of schools shall calculate the actual cost of hospital pupils educated in community schools according to procedures in subdivision (b) approved by the State Department of Developmental Services and the State Department of Education.

(d) If the calculated actual cost of educating these pupils is more or less than the total amount the county superintendent of schools has received for the fiscal year pursuant to subdivision (a), the following year's distribution shall be adjusted accordingly.

(e) The county superintendent of schools shall distribute funds to participating districts on a pro rata basis.

- Contract Review by Departments of Finance and General Services

56858.5. (a) Any contract prescribed by this chapter shall become effective unless disapproved by the State Department of Finance or State Department of General Services within 20 working days of receipt of the contract. Each department shall have 10 working days to consider the contract.

- Contract Submittal

(b) Contracts shall be submitted to the State Department of Developmental Services for approval before May 15.

- Conditions for Payment

(c) No payments shall be processed in advance of contract approval, and no educational services shall be provided in the community school programs in advance of contract approval.

- In-Kind Services

56858.7. (a) Nothing in this chapter shall prohibit the inclusion of in-kind services or the assignment of state hospital personnel in a contract for services pursuant to this chapter.

- Ten Percent of Contract Costs

(b) Ten percent of the contract costs shall be attributed to in-kind services. In-kind services above 10 percent of the contract costs shall be mutually agreed upon by both parties to the contract. Any disagreement over in-kind services above 10 percent shall not be cause for delaying approval of the contract.

- Initiation or Removal of In-Kind Personnel

(c) A 60 day prior written notice shall be given by the state hospital to the county superintendent of schools for the initiation or removal of in-kind state hospital classified personnel.

- Employees Shall Possess Appropriate Credential

56859. All certificated state hospital employees hired to provide educational services to individuals of mandated school age after September 29, 1980, shall possess an appropriate California credential in special education. Current certificated state hospital employees who do not possess appropriate California credentials in special education shall be given a period of not more than five years from September 29, 1980, to obtain such appropriate credentials. Certificated state hospital employees who do not possess appropriate California credentials in special education at the end of the five-year period shall be reassigned to provide educational services to individuals residing in state hospitals who are not eligible for services under Public Law 94-142.

- Transportation Responsibility

56860. Special transportation shall be the responsibility of the state hospital.

- Impact on State Hospital Personnel

56862. It is not the intent of this chapter to displace educational and related services personnel already employed by the state hospitals under the administration of the State Department of Developmental Services or the State Department of Mental Health, or to reduce their salaries or other employee benefits.

The State Department of Developmental Services and the State Department of Mental Health shall complete an annual review of the impact that implementation of this act will have in reducing the need for positions in state hospitals due to time spent by residents in community education programs and shall submit a report on its findings to the Department of Finance for approval.

- Notification to "Parent of Pupil"

56863. The state hospitals, as part of the notification to parents of pupils of their rights pursuant to Public Law 94-142, Public Law 93-112, and this part and implementing regulations, shall notify parents of the right that their child can be considered for education programs other than on state hospital grounds.

For the purposes of this section, the term "parent of pupil" shall mean a parent, a legal guardian, a conservator, a person acting as a parent of a child, or a surrogate parent appointed pursuant to Public Law 94-142.

- Confidentiality of Records

Information and records concerning state hospital patients in the possession of the Superintendent of Public Instruction shall be treated as confidential under Section 5328 of the Welfare and Institutions Code and the Federal Privacy Act of 1974, Public Law 93-579.

- Not Subject to Service Proportions

56864. Individuals with exceptional needs served under this chapter shall not be subject to the service proportions prescribed by Article 7 (commencing with Section 56760) of Chapter 7, or the growth tests prescribed by Section 56728.6.

- Remodeling Classrooms

56865. Funds appropriated by Section 11 of Chapter 1191 of the Statutes of 1980 may be used for remodeling classrooms located in a community school, in addition to the purposes of Chapter 25 (commencing with Section 17785) of Part 10, in order to serve state hospital pupils whose individualized education programs require a community school program.

## CHAPTER 9. JOINT FUNDING FOR EDUCATION OF HANDICAPPED CHILDREN ACT OF 1980

- JOINT FUNDING FOR EDUCATION OF HANDICAPPED CHILDREN ACT OF 1980

- Legislative Findings, Declarations, and Intent

56875. (a) The Legislature hereby finds and declares that numerous federal and state programs make funds available for the provision of education and related services to individuals with exceptional needs. The Legislature further finds and declares that the state has not maximized the use of available federal funds for provision of such services to these children. The Legislature further recognizes the need to simplify procedures for securing all available funds for services to individuals with exceptional needs and for utilizing federal financial resources to the greatest possible extent.

(b) It is the intent of the Legislature to provide local educational agencies with maximum flexibility to secure and utilize all available state and federal funds so as to enable such agencies to meet the needs of individuals with exceptional needs more effectively and efficiently. Furthermore, it is the intent of the Legislature to provide maximum federal funding to local educational agencies for the provision of education and related services to individuals with exceptional needs.

- Timetable for Implementation of Chapter

56876. On or before April 1, 1981, the Department of Education, the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Employment Development Department, the Department of the Youth Authority, and the State Council on Developmental Disabilities shall, in conformance with procedures established by the Office of Planning and Research, submit a plan to both the Senate Finance Committee and the Assembly Ways and Means Committee that shall include a timetable for implementation of this chapter, including, but not limited to the following:

(a) A list of provisions of state regulations and laws for which waivers may be granted in order that local educational agencies may maximize available federal funds to provide education and related services to individuals with exceptional needs without decreasing funds available to other state and local agencies.

(b) A list of provisions of federal law, federal regulations, or both, for which it is recommended that the state seek waiver.

(c) A list of specific related services which shall be provided by the respective departments and their political subdivisions to carry out the mandate of Public Law 94-142 and its implementing regulations.

- Implementation of Funding

56877. (a) Implementation of the funding procedures established pursuant to this chapter shall commence on July 1, 1981.

(b) The State Department of Education shall, in order to implement the provisions of this chapter, do all of the following:

(1) Provide necessary technical assistance to local educational agencies.

(2) Establish procedures for such agencies to obtain available federal funds.

(3) Apply for necessary waivers of federal statutes and regulations governing federal education programs that provide education and related services to individuals with exceptional needs.

(c) The State Board of Education shall grant necessary waivers of applicable state laws and administrative regulations relating to special education programs to participating local educational agencies.

- Waivers of State Laws/
  Regulations

56878. If necessary to simplify procedures for securing all available funds for services to individuals with exceptional needs and for utilizing federal financial resources to the greatest possible extent, the Health and Welfare Agency, at the request of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, or the Employment Development Department; and the Youth and Adult Corrections Agency, at the request of the Department of the Youth Authority, may grant waivers of state laws and regulations for which they have administrative responsibility. Waivers granted pursuant to this section may be only for those laws and regulations identified in the plan submitted to the Legislature pursuant to Section 56876, and only when necessary to implement this part.

- Duties of State Agencies

56879. Based upon the plan submitted pursuant to Section 56876, the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Employment Development Department, and the Department of the Youth

Authority shall, in order to implement the provisions of this chapter, do the following:

(1) Grant necessary waivers of applicable state laws and administrative regulations under their respective jurisdictions to local educational agencies and other agencies, and issue such other administrative regulations as are necessary.

(2) Apply for necessary waivers of federal statutes and regulations governing federal programs which provide services to individuals with exceptional needs and which are under their respective jurisdictions.

- Evaluation of Funding Procedures by Department of Finance

56880. (a) The Department of Finance shall evaluate the funding procedures established pursuant to this chapter.

(b) Such evaluation shall examine the implementation, effectiveness, and financial benefits of the funding procedures and shall include, but not be limited to, an examination of all the following:

(1) The availability to individuals with exceptional needs of education and related services provided by public and private agencies.

(2) The amount of federal funds utilized to provide education and related services to individuals with exceptional needs and the increase in the proportion of federal funds utilized by participating local educational agencies to provide such services to individuals with exceptional needs.

(3) The effect of the funding procedures established pursuant to this chapter on the amount of total federal funds received by the state to provide human services.

(c) The scope, content, and methodology of the evaluation shall be submitted for review to the Joint Legislative Budget Committee.

(d) A preliminary evaluation shall be submitted to the Legislature no later than January 1, 1982; an interim evaluation no later than January 1, 1983; and a final evaluation no later than January 1, 1984.

- Governor's Office of Planning and Research Responsible for Development and Review of State Agency Plans for Funds Available Under Federal Programs

56881. (a) The Office of Planning and Research shall establish procedures for development and review of state agency plans for funds available under all federal programs which may provide services to individuals with exceptional needs and which are within the jurisdictions of the Department of Education, the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Employment Development Department, the Department of the Youth Authority, and the State Council on Developmental Disabilities. Results of the review shall be transmitted to the state agency preparing the plan and to the responsible cabinet level agency to make a determination if the plan shall be changed. Such planning procedures and review shall assure coordination between state agencies and shall assure that applicable plans enable local education agencies to secure maximum available federal funding, without decreasing funds available to other state and local agencies, under each of the following federal programs:

(1) Education for All Handicapped Children as provided under P.L. 91-230, Education of the Handicapped Act, Title VI, Part B, as amended by P.L. 93-380 and by P.L. 94-142.

(2) Medical Assistance (Medicaid), as provided under the Social Security Act of 1935, Title XIX, as amended.

(3) Early and Periodic Screening, Diagnosis and Treatment as provided under P.L. 74-271, Social Security Act of 1935, Title XIX as amended, Section 1905 (a)(4)(B).

(4) Developmental Disabilities Services as provided under P.L. 91-517, the Developmental Disabilities Services and Construction Act of 1970, as amended by P.L. 94-103 and the Developmental Disabilities Assistance and Bill of Rights Act, as amended by P.L. 95-602, Amendments to the Rehabilitation Act of 1973.

(5) Social Services as provided under P.L. 74-271, Social Security Act of 1935, Title XX, as amended by P.L. 93-647, P.L. 94-401, P.L. 94-566, and P.L. 95-171.

(6) Crippled Children's Services as provided under P.L. 74-271, Social Security Act of 1935, Title V, Section 504, as amended.

(7) Vocational Training and Counseling Services as provided under P.L. 94-482, Vocational Educational Act; P.L. 93-112, as amended by P.L. 93-516, the Rehabilitation Act of 1973; and P.L. 93-203, the Comprehensive Employment and Training Act, as amended.

(8) Maternal and Child Health Services, as provided under P.L. 74-271, Social Security Act of 1935, Title V, Section 503, as amended.

(9) Supplementary Security Income, Disabled Children's Program, as provided under P.L. 74-271, Social Security Act of 1935, Title XVI, Section 1615(b) as amended by P.L. 94-566.

(b) In addition to the programs enumerated in subdivision (a), any other programs under which the following services may be provided to individuals with exceptional needs shall be subject to the review procedure specified in subdivision (a) as conducted by the Office of Planning and Research.

(1) Screening and identification.

(2) Assessment and diagnosis.

(3) Health related services, including, but not limited to, speech pathology and audiological services, physical therapy, occupational therapy, and vision services and therapy.

(4) Psychological counseling.

(5) Mental health services.

(6) Vocationally related services.

(7) Social services.

(8) Transportation services.

(9) Other services necessary to assist individuals with exceptional needs in benefiting from their education.

- State Board of Education Issues Regulations for Local Educational Agencies

56882. On or before May 1, 1981, the State Board of Education shall, after consultation with the Office of Planning and Research and all state agencies listed in Section 56876, issue regulations for implementation of the provisions of this chapter, to be used by local educational agencies, in implementing the provisions of this chapter. Such regulations shall identify all other administrative regulations relating to education and related services which shall be waived for local educational agencies. Such regulations shall include, but not be limited to regulations relating to application, accounting, and reporting procedures for programs which may provide education and related services for individuals with exceptional needs.

- Department of Education Issues Guidelines to Local Educational Agencies

56883. (a) On or before July 1, 1981, the Department of Education shall, after consultation with the Office of Planning and Research and the agencies listed in Section 56876, and based upon the plan required in Section 56876, issue guidelines to local educational agencies, for implementation of the provisions of this chapter.

(b) Such guidelines shall include, but not be limited to, the following:

(1) Identification of sources of funds available under all state and federal programs which may provide education and related services to individuals with exceptional needs and for which local educational agencies and other applicable agencies are eligible.

(2) Identification of all statutes and regulations applicable to programs for individuals with exceptional needs under the jurisdictions of the Department of Education, the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Employment Development Department, and the Department of the Youth Authority, which may be waived pursuant to subdivisions (b), (c), and (d) of Section 56877.

- State Interagency Agreements

- Definition of Each Agency's Roles and Responsibilities for Serving Individuals With Exceptional Needs

56884. To assist in implementation of the provisions of this chapter, the Department of Education and state agencies listed in Section 56876 shall, by April 1, 1981, after consultation with representatives of their respective local administering agencies, negotiate and enter into interagency agreements to help promote coordination of services for individuals with exceptional needs. The interagency agreements shall include, but not be limited to, the definition of each agency's roles and responsibilities for serving individuals with exceptional needs.

- Amounts of Funds to Be Transferred Between State Agencies

56885. The Department of Finance shall, after consultation with appropriate state agencies ascertain the amounts of funds, if any, that should be transferred between state agencies in order to achieve the purposes of the bill and shall notify the Joint Legislative Budget Committee, the Senate Education Committee, and the Assembly Education Committee of such amounts pursuant to the budget Act.

- Savings Used to Defer Increased Costs of PL 94-142

Any savings that may occur to any program due to maximized use of federal funds or services to individuals with exceptional needs as provided in this article shall be utilized to defer projected increased costs to meet full mandates of Public Law 94-142.

# SELECTED PROVISIONS NOT INCLUDED IN PART 30

## NEW BUILDING AREA ALLOWANCES FOR SPECIAL EDUCATION PROGRAMS

(Education Code - Part 10)

(As Amended by SB 327, Chapter 886, Statutes of 1986)

17747. (a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program Facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

- Allowable New Building Area for Special Education Programs

- Maximum Square Footage Schedule

| Special Day Class Basic Need | Grade Levels | Loading* | Square Footage |
|---|---|---|---|
| Nonsevere Handicap | | | |
| —Specific Learning Disability | All | 12 | 1080 |
| —Mildly Mentally Retarded | All | 12 | 1080 |
| —Severe Disorder of Language | All | 10 | 1080 |
| Severe Handicap | | | |
| —Deaf and Hard of Hearing | All | 10 | 1080 |
| —Visually Handicapped | All | 10 | 1330<br>(1080 + 250 storage) |
| —Orthopedically and Other Health Impaired | All | 12 | 2000<br>(1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy + 75 therapy per additional classroom) |
| —Autistic | All | 6 | 1160<br>(1080 + 80 toilets) |

| | | | |
|---|---|---|---|
| —Severely Emotionally Disturbed | All | 6 | 1160<br>(1080 + 80 toilets) |
| —Severely Mentally Retarded | Elem. | 12 | 1750<br>(1080 + 400 toilets + 270 daily living skills) |
| | Secon. | | 2150<br>(1080 + 400 toilets + 270 daily living skills + 400 vocational) |
| —Developmentally Handicapped | All | 10 | 2000<br>(1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy ** + 750 therapy per additional CR) |
| —Deaf-Blind/Multi | All | 5 | 1400<br>(1080 + 200 storage + 150 toilets) |

| | | | Pupils | Square Feet |
|---|---|---|---|---|
| Resource Specialist Program for those pupils with handicapping conditions whose needs have been identified by the Individualized Education Program (IEP) Team, who require special education for a portion of the day, and who are assigned to a regular classroom for a majority of the school day*** | All | Maximum caseload for RS is 28, not all served at same time. | 1—8 | 240 |
| | | | 9—28 | 480 |
| | | | 29—37 | 720 |
| | | | 38—56 | 960 |
| | | | 57—65 | 1200 |
| | | | 66—85 | 1440 |
| | | | 86—94 | 1680 |
| | | | 95—112 | 1920 |

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational need (Sec. 56364).

** Therapy add-ons not to be provided if on same site as orthopedically handicapped.

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.

- Building Area Computation

## NEW SCHOOL FACILITIES - MAXIMIZING INTERACTION

(Education Code - Part 10)

(AB 3359 - Chapter 1050, Statutes of 1986)

17747.5. (a) All school facilities purchased or newly constructed pursuant to this chapter for use, in whole or in part, by pupils who are individuals with exceptional needs, as defined in Section 56026, shall be designed and located on the school site so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both.

- Maximize Interaction

(b) School district governing boards and county offices of education shall ensure that school facilities for pupils who are individuals with exceptional needs are integrated with other school facilities in applying for the purchase or new construction of school facilities pursuant to this chapter.

- District and County Responsibilities

(c) The State Allocation Board, after consultation with the State Department of Education and representatives from county offices of education, special education services regions, and school districts, shall develop and adopt any regulations necessary to implement this section.

- Regulations

(d) Notwithstanding any other provision of law, the requirement set forth in subdivision (a) may be waived, by the Superintendent of Public Instruction, only upon compliance with the following procedure:

- Superintendent's Waiver Procedure

(1) The applicant school district or county superintendent of schools shall file a written request for waiver that documents the reasons for its inability to comply with the requirement.

(2) The State Department of Education shall verify the reasons set forth pursuant to paragraph (1), including the documentation submitted, which verification shall be completed no later than 30

days after the filing of the request for waiver with the Superintendent of Public Instruction.

(3) The Advisory Commission on Special Education, as established under Section 33590, at its first scheduled meeting following the verification conducted pursuant to paragraph (2), shall review the request for waiver, accompanying documentation, and the verification findings of the State Department of Education. No later than 15 days following the date of that meeting, the commission shall submit its written comments and recommendations regarding the request for waiver to the Superintendent of Public Instruction.

(4) The Superintendent of Public Instruction shall review the comments and recommendations submitted by the Advisory Commission on Special Education prior to approving or rejecting the request for waiver.

(5) Any request for waiver, submitted in accordance with this section, that is not rejected within 60 days of its receipt by the State Department of Education, shall be deemed approved.

(e) This section does not apply to any application for project funding under this chapter that meets one of the following conditions:

(1) The application was submitted to the board prior to January 1, 1987, and all of the facilities under the project for use, in whole or in part, by pupils who are individuals with exceptional needs are located on a school site on which facilities for use by other pupils are also located.

(2) The application is for any other project, for which, prior to January 1, 1987, the board approved the drawing of final plans and the preparation of final specifications.

## PORTABLE CLASSROOMS FOR INFANT/PRESCHOOL CHILDREN

(Education Code - Part 10)

(AB 3421 - Chapter 576, Statutes of 1986)

17789.5. The board may lease portable classrooms to any school district or county superintendent of schools which serves infant or preschool individuals with exceptional needs, as defined in Section 56026, and which operates programs pursuant to Part 30 (commencing with Section 56000). These portable classrooms shall be adequately equipped to meet the educational needs of these students, including, but not limited to, sinks and restroom facilities.

- Portable Classrooms for
  Infant and Preschool
  Programs

# COMMISSION ON SPECIAL EDUCATION

(Education Code - Part 20)

## ARTICLE 6. ADVISORY COMMISSION ON SPECIAL EDUCATION

- ADVISORY COMMISSION ON SPECIAL EDUCATION

- Creation and Membership

33590. (a) There is in the state government the Advisory Commission on Special Education consisting of:

(1) A Member of the Assembly appointed by the Speaker of the Assembly.

(2) A Member of the Senate appointed by the Senate Committee on Rules.

(3) Three public members appointed by the Speaker of the Assembly, one of whom shall be a parent of a pupil in either a public or private school who has received or is currently receiving special education services due to a handicapping condition.

(4) Three public members appointed by the Senate Committee on Rules, one of whom shall be a parent of a pupil in either a public or private school who has received or is currently receiving special education services due to a handicapping condition.

(5) Four public members appointed by the Governor, one of whom shall be a parent of a pupil in either a public or private school who has received or is currently receiving special education services due to a handicapping condition.

(6) Five public members appointed by the State Board of Education, upon the recommendation of the Superintendent of Public Instruction or the members of the State Board of Education, one of whom shall be a parent of a pupil in either a public or private school who has received or is currently receiving special education services due to a handicapping condition.

- Representative Group

(b) The commission membership shall be selected to ensure a representative group knowledgeable about the wide variety of handicapping conditions which require special programs in order to achieve the goal of providing an appropriate education to all eligible pupils.

(c) On January 1, 1984, the appointing powers listed in subdivision (a) shall terminate the appointment of the public members appointed before that date and shall make appointments pursuant to subdivisions (a), (b), and (d).

- Four-Year Terms

(d) The term of each public member shall be for four years. However, the members appointed on January 1, 1984, shall be appointed on the following basis:

(1) Of the public members appointed by the Speaker of the Assembly, two shall hold office for four years, one shall hold office for two years.

(2) Of the public members appointed by the Senate Committee on Rules, two shall hold office for four years, one shall hold office for two years.

(3) Of the public members appointed by the Governor, two shall hold office for four years, two shall hold office for two years.

(4) Of the public members appointed by the State Board of Education, three shall hold office for four years, two shall hold office for two years.

(e) In no event shall any public member serve more than two terms.

- Members of Legislature

33591. The Members of the Legislature appointed to the commission pursuant to Section 33590 shall have the powers and duties of a joint legislative committee on the subject of special education and shall meet with, and participate in, the work of the commission to the extent that such participation is not incompatible with their positions as Members of the Legislature.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power.

- Compensation

33592. The members of the commission shall serve without compensation, except they shall receive their actual and necessary expenses incurred in the performance of their duties and responsibilities, including traveling expenses.

Reimbursement of other expenses, which are determined to be necessary for the commission to function, but do not exceed the commission's budget, may be approved by the commission and the executive secretary to the commission.

- Executive Secretary

33593. The Superintendent of Public Instruction or his representative shall serve as executive secretary to the commission.

- Chair

33594. The commission shall select one of its members to be chairman of the commission.

- Study, Assist, and Advise

33595. (a) The commission shall study and provide assistance and advice to the State Board of Education, the Superintendent of Public Instruction, the Legislature, and the Governor in new or continuing areas of research, program development, and evaluation in special education.

- Reporting Responsibilities

(b) The commission shall report to the State Board of Education, the Superintendent of Public Instruction, the Legislature, and the Governor not less than once a year on the following:

(1) Activities necessary to be undertaken regarding special education for individuals with exceptional needs which are enumerated in Section 56100.

(2) The priorities and procedures utilized in the distribution of federal and state funds.

(3) The unmet educational needs of individuals with exceptional needs within the state.

(4) Recommendations relating to providing better educational services to individuals with exceptional needs including, but not limited to, the development, review, and revision of the definition of "appropriate," as that term is used in the phrase "free appropriate public education," as used in Public Law 94-142.

- Recommendations and Requests

(c) Commission recommendations or requests shall be transmitted by letter from the commission chairperson to the president of the State Board of Education. Each communication shall be placed on the agenda of the next forthcoming state board meeting in accordance with the announced annual state board agenda cutoff dates. Following the state board meeting, the commission shall be notified by the state board as to what action has been taken on each recommendation or request. Commission recommendations or requests shall also be transmitted by letter from the commission chairperson to the Superintendent of Public Instruction, the Governor, and to appropriate members of the Legislature.

- Definition

33596. As used in this article, "commission" means the Advisory Commission on Special Education.

## TRANSPORTATION CONSOLIDATION

(Education Code - Part 24)

(As Amended by SB 1264, Chapter 1603, Statutes of 1985; AB 982, Chapter 1546, Statutes of 1985; and SB 734, Chapter 1326, Statutes of 1985)

### Article 10. Allowances for Transportation

41850. (a) Apportionments made pursuant to this article shall only be made for transportation, as defined in this section.

(b) As used in this article, "transportation" includes all of the following:

- Transportation Definition

(1) The transportation of pupils between their homes and the regular full-time day school they attend, as provided by a school district or county superintendent of schools.

(2) The payment of moneys by a school district or county superintendent of schools to parents or guardians of pupils made in lieu of providing for the transportation of pupils between their homes and the regular full-time day schools they attend.

(3) Providing board and lodging to pupils by a school district or county superintendent of schools made in lieu of providing for the transportation of pupils between their homes and the regular full-time day schools they attend.

(4) The transportation of pupils between the regular full-time day schools they would attend and the regular full-time occupational training classes they attend, as provided by a regional occupational center or program.

(c) For purposes of this article, the computation of the allowances provided to a regional occupational center or program shall be subject to all of the following:

- ROC/P Computation

(1) A regional occupational center or program shall receive no allowance for 50 percent of the total transportation costs.

(2) A regional occupational center or program shall be eligible for a transportation allowance only if the total transportation costs exceed 10 percent of the total operational budget of the regional occupational center or program.

(3) A regional occupational center or program eligible for a transportation allowance pursuant to paragraph (2) shall receive an amount equal to one-third of the transportation costs subject to reimbursement.

(d) As used in this article, "transportation" includes the transportation of individuals with exceptional needs, as specified in their individualized education program.

- Transportation of Individuals With Exceptional Needs

41851. (a) For the 1984-85 fiscal year and each fiscal year thereafter, from Section A of the State School Fund the Superintendent of Public Instruction shall apportion to each school district and county superintendent of schools which received a transportation allowance in the prior fiscal year, an amount computed pursuant to this section. School districts and county superintendents of schools which provide transportation services by means of a joint powers agreement, a cooperative

- Apportionment Computation

pupil transportation program, or a consortium shall receive transportation allowances pursuant to this section.

(b) Any school district or county superintendent which certifies to the Superintendent of Public Instruction at the end a fiscal year that its approved transportation expenditures for that fiscal year were at least 95 percent of the state allowance received in that fiscal year for the prior fiscal year's approved transportation costs shall receive a transportation allowance for the current fiscal year equal to the amount of the transportation allowance received in the prior fiscal year, increased by the amount provided in the Budget Act.

(c) Any school district or county superintendent which certifies at the end of a fiscal year that its approved transportation expenditures for fiscal year were less than 95 percent of the state allowance received in that fiscal year for the prior fiscal year's approved transportation costs shall certify the applicable percentage and shall receive a transportation allowance for the current fiscal year equal to the certified percentage of the transportation allowance received in that fiscal year plus 5 percent, the sum increased by the amount provided in the Budget Act.

- Transfer of Transportation Services

(d) For the purpose of receiving an allowance pursuant to this section, a school district, county superintendent, or joint powers agency which transfers any part of its pupil transportation service to another entity shall report to the Superintendent of Public Instruction the proportion of the costs in the fiscal year prior to the transfer that are attributable to the part of the service transferred. In determining the allowance for the fiscal years subsequent to the transfer, the Superintendent of Public Instruction, prior to the application of any cost-of-living adjustment, shall reduce the allowance of the entity transferring the service in proportion to the costs reported, and, if appropriate, increase or establish the allowance of the entity assuming the transferred service by that amount.

- Revisions to Expenditure Reports

(e) For the 1985-86 fiscal year, and each fiscal year thereafter, for purposes of this section and Section 42238, the state allowance received in any fiscal year shall not include revisions to expenditure reports or other documents, schedules, or reports that are used in determining state apportionments pursuant to this section, submitted by a school district for any prior year apportionment, and received by the Superintendent of Public Instruction after June 30, 1985, that would result in a change in the adjustment to the district's revenue limit calculated pursuant to subdivision (a) or (b) of Section 42241.4 as those provisions read in the 1982-83 or 1983-84 fiscal year.

- Shall Not Include Revisions to Expenditure Reports

(f) For the 1985-86 fiscal year and each fiscal year thereafter, for purposes of this section and Section 42238, the state allowance received in any fiscal year shall not include revisions to expenditure reports or other documents, schedules, or reports that are used in determining state apportionments pursuant to this section, submitted by a school district for any prior fiscal year apportionment, and received by the Superintendent of Public Instruction after June 30, 1985, that would result in a change in the adjustment to the district's revenue limit calculated pursuant to subdivision (e) of Section 42241.

- Shall Not Include Revisions to Transportation Reports

(g) For the 1985-86 fiscal year and each fiscal year thereafter, for purposes of this section, the state allowance received in any fiscal year shall not include revisions to transportation reports or other documents, schedules, or reports that are used in determining state apportionments pursuant to Article 8 (commencing with Section 56770) of Chapter 7 of Part 30, submitted by a school district or county superintendent of schools for the 1981-82, 1982-83, or 1983-84 fiscal year apportionment, and received by the Superintendent of Public Instruction after June 30, 1985, for the purpose of other than home-to-school transportation of individuals with exceptional needs as specified in their individualized education plan, that would result in an increase in the district's or county superintendent of schools' state allowance pursuant to this section.

- Independent Auditor Statement

(h) Commencing in the 1985-86 fiscal year, all revisions to prior fiscal year expenditure reports and any other documents, schedules, or reports that are used in determining state allowances pursuant to this section, submitted by a school district or county office of education for purposes of receiving apportionments pursuant to this section, and received by the Superintendent of Public Instruction after June 30, 1985, shall be accompanied by a statement signed by the independent auditor of the school district or county office of education which certifies that the revisions are corrections of errors contained in a document, schedule, or report previously submitted to the Superintendent of Public Instruction, and that the information contained in the revised document, schedule, or report is true and accurate.

41851.5. As used in this article, "approved transportation costs" includes replacement of buses used by a school district or county superintendent of schools to provide transportation services.

- Replacement of Buses

41852. (a) Any school district or county superintendent of schools that receives a transportation apportionment in the 1984-85 fiscal year, or any fiscal year thereafter, shall establish a restricted home-to-school transportation account within its general fund. The district or county superintendent shall deposit in the restricted home-to-school transportation account all transportation apportionments received pursuant to this article in any fiscal year and any other funds at the option of the district or county superintendent. Any funds remaining in the restricted home-to-school transportation account at the end of the fiscal year may remain in the restricted home-to-school transportation account for expenditure in subsequent fiscal years or may be transferred to the pupil transportation equipment fund.

- Transportation Account

(b) Any school district or county superintendent of schools may establish a pupil transportation equipment fund. The fund shall receive all state and local funds designated for acquisition, rehabilitation, or replacement of pupil transportation equipment. Funds deposited in the pupil transportation equipment fund shall be used exclusively for acquisition, rehabilitation and replacement of pupil transportation equipment, except as provided in Section 41853.

- Equipment Fund

41853. If a school district or county superintendent of schools decides to discontinue its transportation services, any unencumbered funds remaining in the restricted home-to-school transportation account after transportation services are discontinued shall be transferred to the general fund of the district or county superintendent.

- Discontinuing Transportation Services

In the fiscal year in which the funds are transferred, the Superintendent of Public Instruction shall reduce the state apportionment pursuant to Section 2558 or 42238 to the district or county superintendent by the amount of the funds transferred from the restricted home-to-school transportation account to the general fund of the district or county superintendent.

41853.3. (a) On or before February 1, 1986, the Antelope Valley Schools Transportation Agency may request that it be deemed to be a single entity for purposes of receiving transportation allowances pursuant to this article and, if the single entity status is requested, shall cause a notice of the joint powers agreement to be prepared and filed with the Superintendent of Public Instruction. The notice shall include all information required for that notice prescribed by Section 6503.5 of the Government Code.

- Single Entity

(b) Upon receipt of the notification described in subdivision (a), state verification of the joint powers agreement, and the consent of each participating agency, the Superintendent of Public Instruction shall authorize the Los Angeles County Office of Education to file consolidated reports and other documents required by this section and emergency rules and regulations prescribed by the superintendent for purposes of receiving transportation allowances for pupil transportation services provided by the Antelope Valley Schools Transportation Agency. The consolidated pupil transportation allowances for the Antelope Valley Schools Transportation Agency shall be apportioned to the Los Angeles County Office of Education until such time as the joint powers agreement executed pursuant to Chapter 5 (commencing with Section 6500 of Division 7 of Title I of the Government Code is terminated, or until one or more of the participating entities rescinds its consent.

Notwithstanding any other provision of law, the Superintendent of Public Instruction shall adopt emergency rules and regulations in order to implement the provisions of this section. The adopted regulations shall be filed with the Secretary of State as emergency regulations.

(c) The Antelope Valley Schools Transportation Agency shall operate under the requirements of Chapter 5 (commencing with Section 6500) of Division 7 of Title I of the Government Code and shall be subject to the same restrictions as are applicable to school districts under that chapter, including the preparation of budget and financial statements required by Article 1 (commencing with Section 42100) and Article 2 (commencing with Section 42120) of Chapter 6 of Part 24; the accounting and auditing requirements prescribed by Article 1 (commencing with Section 41000) and Article 2 (commencing with Section 41010) of Chapter 1 of Part 24; and the expenditure and appropriation controls prescribed by Chapter 9 (commencing with Section 42600) of Part 24.

(d) The Antelope Valley Schools Transportation Agency shall annually report to its participating school districts, on forms designated for that purpose by the Superintendent of Public Instruction, any information deemed necessary by the superintendent.

(e) Changes in the membership of the Antelope Valley Schools Transportation Agency shall be approved in accordance with the transportation agency joint powers agreement, or by amendment to that agreement by the transportation agency governing board. The transportation agency and educational entities requesting any change shall notify the superintendent on or before May 1 preceding the beginning of the fiscal year.

(f) For purposes of Section 41851 of the Education Code, the home-to-school transportation aid received by the Antelope Valley Schools Transportation Agency in the 1985-86 fiscal year and each fiscal year thereafter shall be computed as if the home-to-school transportation aid received by the transportation agency in the 1984-85 fiscal year was one million eight hundred thirty thousand seven hundred three dollars ($1,830,703).

(g) The Legislature hereby recognizes that the use of a joint powers agreement by the Antelope Valley Schools Transportation Agency for the purpose of receiving apportionments under Section 41851 of the Education Code is a new concept which requires evaluation prior to approval for use in other areas of the state. On or before January 1, 1988, the State Department of Education, the Department of Finance, the Los Angeles County Office of Education, and the Controller shall conduct an evaluation of the Antelope Valley Schools Transportation Agency and submit recommendations to the Legislature regarding the use of joint powers agreements for these purposes prior to any extension of this authorization for other agreements.

41854. This article shall become operative July 1, 1984. - Operative Date

## REVENUE LIMITS FOR PUPILS IN SPECIAL CLASSES AND CENTERS

(Education Code - Part 24)

(AB 70 - Chapter 1302, Statutes of 1983)

42238.9. The amount per unit of average daily attendance subtracted pursuant to Section 56712 for revenue limits for pupils in special classes and centers shall be the district's total revenue limit for the current fiscal year computed pursuant to Section 42238, including funds received pursuant to Article 4 (commencing with Section 42280), but excluding funds received pursuant to Section 42238.7, 42238.8 and 45023.4, divided by the district's current year average daily attendance pursuant to Section 42238.5.

- Revenue Limits

## REAPPROPRIATION OF PL 94-142 FUNDS

(Education Code - Part 24)

(AB 70 - Chapter 1302, Statutes of 1983)

42242. The Superintendent of Public Instruction shall determine at the time of each apportionment the proposed receipts and expenditures of funds under the provisions of Public Law 94-142. In the event that the proposed distribution of funds results in funds not being expended, those funds are hereby reappropriated for reallocation for local entitlements for special education.

This section shall become operative July 1, 1984.

- Unexpended Federal Funds

## CERTIFICATED EMPLOYEE EMPLOYMENT RIGHTS

(Education Code - Part 25)

(As Amended by SB 998 -
Chapter 1452, Statutes of 1987)

44903.7. When a local plan for the education of individuals with exceptional needs is developed pursuant to Article 6 (commencing with Section

56170) of Chapter 2 of Part 30, the following provisions shall apply:

- Employee Entitlements

(a) Whenever any certificated employee, who is performing service for one employer, is terminated, reassigned, or transferred, or becomes an employee of another employer because of the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980, the employee shall be entitled to the following:

- Retain Seniority Rights

(1) The employee shall retain the seniority date of his or her employment with the district or county office from which he or she was terminated, reassigned, or transferred, in accordance with Section 44847. In the case of termination, permanent employees shall retain the rights specified in Section 44956 or, in the case of probationary employees, Section 44957 and 44958, with the district or county office initiating the termination pursuant to Section 44955.

- Seniority of Classification Not Affected

(2) The reassignment, transfer, or new employment caused by the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980, shall not affect the seniority or classification of certificated employees already attained in any school district that undergoes the reorganization. These employees shall have the same status with respect to their seniority or classification, with the new employer, including time served as probationary employees. The total number of years served as a certificated employee with the former district or county office shall be credited, year for year, for placement on the salary schedule of the new district or county office.

- Employers

(b) All certificated employees providing service to individuals with exceptional needs shall be employed by a county office of education or an individual school district. Special education local plan areas or responsible local agencies resulting from local plans for the education of individuals with exceptional needs formulated in accordance with Part 30 (commencing with Section 56000) shall not be considered employers of certificated personnel for purposes of this section.

- Priority on Being Informed/Filling Positions

(c) Subsequent to the reassignment or transfer of any certificated employee as a result of the reorganization of special education programs, pursuant to Chapter 797 of the Statutes of 1980, that employee shall have priority, except as provided in subdivision (d), in being informed of and in filling certificated positions in special education in the areas in which the employee is certificated within the district or county office by which the certificated employee is then currently employed. This priority shall expire 24 months after the date of reassignment or transfer, and may be waived by the employee during that time period.

- Other County Office/ School District

(d) A certificated employee who has served as a special education teacher in a district or county office and has been terminated from his or her employment by that district or county office pursuant to Section 44955, shall have first priority in being informed of and in filling vacant certificated positions in special education, for which the employee is certificated and was employed, in any other county office or school district that provides the same type of special education programs and services for the pupils previously served by the terminated employee. For a period of 39 months for permanent employees and 24 months for probationary employees from the date of termination, the employee shall have the first priority right to reappointment as provided in this section, if the employee has not attained the age of 65 years before reappointment.

# LONGER DAY-YEAR FOR COUNTY OPERATED SPECIAL EDUCATION PROGRAMS

(Education Code - Part 26)

(As Added by AB 2557 - Chapter 115, Statutes of
1985, As Amended by SB 1264, Chapter 1603,
Statutes of 1985)

- 180 Days or More

46200.5. (a) In the 1985-86 fiscal year, for each county office of education that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year of special day classes pursuant to Section 56364, the Superintendent of Public Instruction shall determine an amount equal to seventy dollars ($70) per unit of current year second principal apportionment average daily attendance for special day classes. This computation shall be included in computations made by the superintendent pursuant to Article 2 (commencing with Section 56710) of Chapter 7 of Part 30.

- Less Than 180 Days

(b) For any county office of education that received an apportionment pursuant to subdivision (a), that offers less than 180 days of instruction in the 1986-87 year or any fiscal year thereafter, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201.5 for that fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment per unit of average daily attendance for that fiscal year by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1985-86 fiscal year.

- Computation for Special Classes

46201.5. (a) In each of the 1985-86 and 1986-87 fiscal years, for each county office of education that certifies to the Superintendent of Public Instruction that, for special day classes pursuant to Section 56364, it offers at least the amount of instructional time specified in this subdivision, the Superintendent of Public Instruction shall determine an amount equal to eighty dollars ($80) in the 1985-86 fiscal year and forty dollars ($40) in the 1986-87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in kindergarten and grades 1 to 8 inclusive, and one hundred sixty dollars ($160) in the 1985-86 fiscal year and eighty dollars ($80) in the 1986-87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in grades 9 to 12, inclusive.

This computation shall be included in computations made by the superintendent pursuant to Article 2 (commencing with Section 56710) of Chapter 7 of Part 30.

(1) In the 1985-86 fiscal year:
(A) 34,500 minutes in kindergarten.
(B) 47,016 minutes in grades 1 to 3, inclusive.
(C) 50,000 minutes in grades 4 to 8, inclusive.
(D) 57,200 minutes in grades 9 to 12, inclusive.
(2) In the 1986-87 fiscal year:
(A) 36,000 minutes in kindergarten.
(B) 50,400 minutes in grades 1 to 3, inclusive.
(C) 54,000 minutes in grades 4 to 8, inclusive.
(D) 64,800 minutes in grades 9 to 12, inclusive.

- Add to Base Apportionment

(b) Each county office of education that receives an apportionment pursuant to subdivision (a) in a fiscal year shall, in the subsequent year, add the amount received per pupil to the county office's base special education apportionment.

- Reduction of Apportionment When Instructional Time Is Reduced

(c) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1985-86 fiscal year, and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1986-87 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986-87 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1986-87 fiscal year and fiscal years thereafter. For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1986-87 fiscal year, and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1987-88 fiscal year, or any fiscal year thereafter, the superintendent shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987-88 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1987-88 fiscal year and fiscal years thereafter.

## SUSPENSION/EXPULSION OF HANDICAPPED PUPILS

(Education Code - Part 27)
(Selected Provisions)

(As Amended by AB 56 - Chapter 383, Statutes of 1987 and AB 439 - Chapter 134, Statutes of 1987)

- Grounds for Suspension or Expulsion

48900. A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(l) Knowingly received stolen school property or private property.

No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance. A pupil may be suspended or expelled for acts which are enumerated in this section and related to school activity or attendance which occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

- Suspension: Equal Treatment of Handicapped and Non-handicapped Pupils

48900.5. Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil, including an individual with exceptional needs, as defined in Section 56026, may be suspended for any of the reasons enumerated in Section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process.

- Principal, Designee, or Superintendent May Suspend Pupil

48911. (a) The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal's designee, or the superintendent of schools between the pupil and, whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or the principal's designee or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal or the principal's designee or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal or the principal's designee or the superintendent of schools determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the superintendent to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference, and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

(e) A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board.

(f) The parent or guardian of any pupil shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior.

No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at such conference.

(g) In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board, the school district superintendent or other person designated by the superintendent in writing may extend the suspension until such time as the governing board has rendered a decision in the action. However, an extension may be granted only if the superintendent or the superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

(h) For the purposes of this section, a "principal's designee" is any one or more administrators at the school site specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event that there is not an administrator in addition to the principal at the school site, a certificated person at the school site may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one such person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for the purposes of this article when both the principal and the principal's primary designee are absent from the school site. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

- Nonpublic School Principal

48911.5. The site principal of a contracting nonpublic, nonsectarian school providing services to individuals with exceptional needs under Section 56365 and 56366, shall have the same duties and responsibilities with respect to the suspension of pupils with previously identified exceptional needs prescribed for the suspension of pupils under Section 48911.

- Meeting Policy

48914. Each school district is authorized to establish a policy that permits school officials to conduct a meeting with the parent or guardian of a suspended pupil to discuss the causes, the duration, the school policy involved, and other matters pertinent to the suspension.

- Expulsion: Particular Circumstances

48915. (a) The principal or the superintendent of schools shall recommend a pupil's expulsion for any of the following acts, unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the particular circumstance, which shall be set out in the report of the incident:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.

(3) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053)

of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900.

(c) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil violated subdivision (f), (g), (h), (i), (j), (k), or (l) of Section 48900 and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

- Expulsion Conditions for Handicapped Pupils

48915.5. (a) In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled pursuant to subdivisions (b) and (c) of Section 48915 only if all of the following conditions are met:

(1) An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30.

(2) The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified handicap.

(3) The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

The term "pupil with previously identified exceptional needs," as used in this section, means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 and state special schools.

- Procedural Safeguards

(b) For purposes of this section, all applicable procedural safeguards prescribed by federal and state law and regulations apply to proceedings to expel pupils with previously identified exceptional needs, except that, notwithstanding any other provision of law, parental consent is not required as a condition for expulsion proceedings or the decision to expel.

- Expulsion Procedures and Time Lines

(c) Each local education agency, pursuant to the requirements of Section 56221, shall develop procedures and time lines governing expulsion procedures for individuals with exceptional needs.

- Parent Rights

(d) The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting conducted pursuant to subdivision (a) preceding the commencement of expulsion proceedings through actual participation, representation, or a conference call. Each parent shall be notified of his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided. Each parent may request that the meeting be postponed for up to three additional school days. In the event that a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement.

- Recent and Relevant Information

(e) In determining whether a pupil should be expelled, the individualized education program team shall base its decision on recent and relevant information regarding the pupil.

The term "recent," as used in this subdivision, means information that has been acquired within three years of the date of the alleged misconduct.

The term "relevant information," as used in this subdivision, means all of the following:

(1) A review of the pupil's school progress and behavior, if available, including, but not limited to, a review of the pupil's individualized education program, teacher progress reports and comments, school health records, and school discipline records.

(2) A review of the ability of the pupil to conform his or her behavior to the prescribed standards, and a determination of the relationship, if any, between the pupil's behavior and his or her handicapping condition.

- Alleged Misconduct Not Caused by, or Manifested by, Handicap

(f) If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's handicapping condition, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures prescribed under this article.

- Parent's Right to Due Process Hearing

(g) The parent of each pupil with previously identified exceptional needs has the right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code if the parent disagrees with the decision of the individualized education program team made pursuant to subdivision (f), or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained, pursuant to subdivision (e).

The State Board of Education shall adopt regulations to ensure that hearings for the expulsion of pupils with previously identified exceptional needs are conducted in a more timely manner than those conducted for other pupils under Chapter 5 (commencing with Section 56500) of Part 30.

In the event that a parent demands a hearing under this subdivision, all time requirements prescribed in this article for suspension or expulsion shall be extended to include the time necessary to conclude the review or appeal of any assessment or determination.

**(See Other Provisions of Article 1, Chapter 6, Part 27 of the Education Code for Additional Information on Pupil Suspension and Expulsion.)**

## SPECIALIZED PHYSICAL HEALTH CARE SERVICES

(Education Code - Part 27)

(AB 3477 - Chapter 1220, Statutes of 1978)

- Qualifications of Service Providers

49423.5. (a) Notwithstanding the provisions of Section 49422, any individual with exceptional needs who requires specialized physical health care services, during the regular school day, may be assisted by the following individuals:

(1) Qualified persons who possess an appropriate credential issued pursuant to Section 44267, or hold a valid certificate of public health nursing issued by the State Department of Health Services; or

(2) Qualified designated school personnel trained in the administration of specialized physical health care provided they perform such services under the supervision of a school nurse, public health nurse, or licensed physician and surgeon.

- Medically Related Training

(b) Specialized health care or other services that require medically related training shall be provided pursuant to the procedures prescribed by Section 49423.

- Providers Must Demonstrate CPR Competence

(c) Persons providing specialized physical health care services shall also demonstrate competence in basic cardiopulmonary resuscitation and shall be knowledgeable of the emergency medical resources available in the community in which the services are performed.

- Definition of Services

(d) "Specialized physical health care services" as used in this section include catheterization, gavage feeding, suctioning, or other services that require medically related training.

- Regulations

(e) Regulations necessary to implement the provisions of this section shall be developed jointly by the State Department of Education and the State Department of Health Services, and adopted by the State Board of Education.

## EARLY DIAGNOSIS OF LEARNING DISABILITIES

(Education Code - Part 27)

(AB 972 - Chapter 1376, Statutes of 1985)

### Article 13. Early Diagnosis of Learning Disabilities

- Testing Program for Learning Disability Problems

49580. The State Department of Education shall develop a testing program to be utilized at the kindergarten grade level to determine which pupils have a potential for developing learning disability problems. The testing procedure shall include an overall screening test for learning disabilities and testing for dyslexia. To the extent feasible, the department shall use existing tests and screening instruments in developing the early diagnosis of the learning disabilities testing program. In developing the program, the department shall consult with experts in the areas of learning and reading difficulties, including, but not limited to, neurologists, psychologists, persons working in these areas in postsecondary educational institutions, teachers, school nurses, education consultants, school psychologists, and other persons with appropriate knowledge and experience in the detection and treatment of learning problems and reading difficulties in early grades.

- Pilot Project

49581. The State Department of Education shall develop and implement a pilot project to determine the effectiveness and feasibility of implementing the early diagnosis of learning disabilities testing program developed pursuant to Section 49580. The pilot project shall administer the early diagnosis testing program to kindergarten aged pupils in order to identify pupils with the potential to develop learning disability problems. Pupils who are identified as having potential learning disability problems shall be referred to existing programs and services which are available to provide assistance.

- Guidelines for Early Diagnosis

49582. On or before January 1, 1986, the State Department of Education shall prescribe guidelines for the early diagnosis of the learning disabilities testing program and pilot project. The guidelines shall include but need not be limited to all of the following:

(a) A definition of "pupils with the potential to develop learning disability problems," as used in this article.

(b) The methods and criteria for selecting one or more sites for the establishment of the pilot project.

(c) The number of sites to be selected for purposes of establishing the pilot project.

(d) Criteria for judging the results and effectiveness of the early diagnosis testing program, as well as criteria for determining the feasibility for implementing the program at the conclusion of the pilot project.

- Report to Legislature

49583. On or before January 1, 1989, the State Department of Education shall submit a report to both educational policy committees of the Legislature regarding the results of the early diagnosis of the learning disabilities pilot project. The report shall include, but need not be limited to, an assessment of the degree to which the early diagnosis of learning disabilities in pupils participating in the pilot program resulted in a reduction of the need for later remedial education for those pupils, and the projected cost effectiveness of this early diagnosis.

# DIFFERENTIAL PROFICIENCY STANDARDS

(Education Code - Part 28)

(As Amended By AB 283 -
Chapter 206, Statutes of 1982)

- Adoption of Standards of Proficiency in Basic Skills

51215. (a) The governing board of each school district maintaining a junior or senior high school shall, by June 1, 1978, adopt standards of proficiency in basic skills for pupils attending school within its school district.

(b) The governing board of each school district maintaining grade 6 or 8, or the equivalent, shall, by June 1, 1979, adopt standards of proficiency in basic skills for pupils attending these grades.

- Standards Include

(c) These standards shall include, but need not be limited to, reading comprehension, writing, and computation skills, in the English language, necessary to success in school and life experiences, and shall be such as will enable individual achievement to be ascertained and evaluated.

- Related to Instructional Program

The standards shall be directly related to the district's instructional program.

- Differential Standards and Assessment Procedures

(d) Differential standards and assessment procedures which shall include, but need not be limited to, reading comprehension, writing, and computation skills, shall be adopted pursuant to this subdivision.

(1) Differential standards and assessment procedures shall be adopted for pupils who:

- For Special Education Pupils

(A) Are enrolled in special education programs pursuant to Part 30 (commencing with Section 56000); or for whom individualized education programs have been developed, and for whom the regular instructional program has been modified, as necessary, under the supervision of a person who holds an appropriate credential in special education; and

- Diagnosed Learning Disabilities

(B) Have diagnosed learning handicaps or disabilities such that the individualized education program team determines they have not demonstrated evidence of the ability to attain the district's regular proficiency standards with appropriate educational services and support.

- IEP Determination

(2) If the team determines that these pupils have not demonstrated evidence of the ability to attain the district's regular proficiency standards with appropriate educational services and support, the team shall develop differential proficiency standards, or modify general differential standards adopted by the governing board, appropriate to the needs and potential of the pupil.

- Differential Standards Included in IEP

(3) Any differential standards shall be included in the individualized education program developed for the pupil pursuant to Part 30 (commencing with Section 56000).

- Part of Ongoing Process

(4) The determination and the development of differential proficiency standards shall be part of the process of developing, reviewing, and revising a pupil's individualized education program.

- May Be Maintained Throughout School Experience

(5) In the case where one or more differential standards are developed for a pupil enrolled in special education, the standards may be maintained throughout the pupil's school experience, irrespective of whether the pupil continues to be enrolled in special education.

- Not Required for Pupil Who Can Attain Regular Proficiency

(6) Nothing in this subdivision shall be construed to require differential proficiency standards for a pupil who a team determines can attain the district's regular proficiency standards with appropriate educational services and support.

- Application of Provisions

(7) The provisions of this subdivision shall apply prospectively and retroactively to pupils enrolled in the 9th grade, or the equivalent thereof, during the 1977-78 school year or any school year thereafter.

- Attain Standards Within Reasonable Amount of Time

(8) Differential standards and assessment procedures adopted pursuant to this subdivision shall permit the pupil for whom they are adopted to attain the standards within a reasonable amount of time but not after the state is no longer required by state or federal law to provide an education to the pupil.

- Reflect Reasonable Level of Competence

(9) It is the intent of the Legislature that the attainment of a standard of proficiency by a pupil shall also reflect the attainment of a reasonable level of competence. The Legislature, therefore, recognizes that there may be some pupils who cannot meet regular or differential standards of proficiency, in reading, writing, and mathematics skills, and others who will need to remain in school beyond grade 12 or the equivalent in order to meet a standard which reflects their maximum potential.

- May Be Part of Classroom Experience

(10) For students with diagnosed learning disabilities, as well as for students participating in the regular school program, proficiency assessments may be part of the classroom experience, and teaching materials may be used as assessment materials.

- Articulation of Standards

(e) Governing boards maintaining elementary or junior high schools located within a school district maintaining a high school shall adopt standards of proficiency in basic skills which are articulated with those standards adopted by the school district maintaining the high school.

(f) Designated employees of all school districts located within a high school district and one or more designees of the high school district shall meet prior to June 1, 1979, to plan for articulation of elementary and high school proficiency standards, and as necessary thereafter to review the effectiveness of such articulation procedures.

- Plan for Articulation of Standards

(g) Standards of proficiency shall be adopted by the governing board with the active involvement of parents broadly reflective of the socioeconomic composition of the district, administrators, teachers, counselors, and, with respect to standards in secondary schools, pupils.

- Active Involvement of Parents, Professionals, Pupils

## WITHHOLDING OF DIPLOMA OF GRADUATION

(Education Code - Part 28)

(AB 3369 - Chapter 1333, Statutes of 1980)

51412. No diploma, certificate or other document, except transcripts and letters of recommendation, shall be conferred on a pupil as evidence of completion of a prescribed course of study or training, or of satisfactory attendance, unless such pupil has met the standards of proficiency in basic skills prescribed by the governing board of the high school district, or equivalent thereof, pursuant to Article 2.5 (commencing with Section 51215) of Chapter 2.

- Standards of Proficiency in Basic Skills

## EARLY INTERVENTION FOR SCHOOL SUCCESS

(Education Code - Part 29)

(SB 1256 - Chapter 1530, Statutes of 1985)

### Article 4.5. The Early Intervention for School Success Program

54685. The Legislature finds and declares that many public school pupils enrolled in prekindergarten, kindergarten, and grade one have developmental deficiencies.

- Legislative Findings and Declarations

The Legislature also finds and declares that there is a need to do all of the following:

(1) To establish a system to identify pupils of the ages of four to seven years, inclusive, with developmental deficiencies.

(2) To implement appropriate instructional programs to reduce the frequency and severity of learning disabilities for these pupils in later years.

(3) To reduce the likelihood that these pupils eventually will need to be placed in remedial programs with higher costs.

The Legislature further finds and declares that the Early Prevention of School Failure Program, validated by the federal Joint Dissemination Review Panel as a proven educational practice, is a model capable of providing a comprehensive range of materials and services to identify and remediate developmental deficiencies in pupils of the ages of four to seven years, inclusive.

The Legislature recognizes that the Special Education Resource Network, which is currently administered by the State Department of Education, provides training and technical assistance to parents, teachers and school personnel, and other professionals in the appropriate assessment and education for students with special needs. It is the intent of the Legislature that the program established pursuant to this article shall compliment and not duplicate the programs provided by the Special Education Resource Network.

- Legislative Intent

54685.1. It is the intent of the Legislature to do all of the following:

(1) To establish the Early Intervention for School Success Program which is an adaptation of the Early Prevention for School Failure Program.

(2) To implement the program at 200 public school sites within the state by June 1991.

(3) To enable school personnel, organized in child study teams, to acquire the skills necessary to identify developmental levels and learning styles of pupils and the necessary knowledge, techniques, and materials to provide appropriate instruction.

(4) To develop and identify model demonstration sites.

(5) To provide for the certification of school personnel as trainers at each demonstration site.

- Selection of Manager

54685.2. The Superintendent of Public Instruction shall select one county superintendent of schools to manage the implementation of the Early Intervention for School Success Program by

February 1, 1986. The county superintendent of schools shall develop a management plan for the implementation of the program at 200 public school sites within the state before July 1, 1991.

54685.3. The management plan required by Section 54685.2 shall include the following activities:

- Management Plan Activities

(1) The dissemination of program information.

(2) The awarding of grants to schools representative of the ethnic, socioeconomic, and geographic diversity of the public school systems.

(3) Provisions for training, materials, and technical assistance.

(4) An adaptation of the Early Prevention of School Failure Program to meet local school needs, including identification of existing materials and development of new materials, if needed.

(5) Selection of successful sites as demonstration models for additional implementation of the plan.

(6) Certification of one primary teacher for each demonstration site to serve as a local trainer.

(7) Provisions for an annual program progress report by the county superintendent of schools and an evaluation of the program to the Legislature by the Legislative Analyst at the end of the third year.

54685.4. The selection of the county superintendent of schools for purposes of Section 54685.2 shall be based on a written application. The Superintendent of Public Instruction shall consider all of the following criteria:

- Criteria for Manager

(1) Experience in disseminating local, regional, and statewide educational programs.

(2) Experience in managing local, regional, and statewide educational programs.

(3) A willingness to serve as a statewide dissemination agency.

(4) A demonstrated understanding of the Early Prevention of School Failure Program.

(5) Experience in providing materials, training, and technical assistance for the Early Prevention of School Failure Program.

(6) The ability to adapt the Early Prevention of School Failure Program to meet specific needs.

(7) A system for the selection of sites for implementing the Early Intervention for School Success Program.

(8) A system to identify model programs from among the sites selected to implement a program.

(9) A demonstrated ability and commitment to continue dissemination of the program after the termination of state funding.

54685.5. The county superintendent selected may accept or reject, at his or her option, designation as manager of the program.

- Accept/Reject Manager Designation

54685.6. The selection of participating sites shall be based on a written application by the school district and the criteria listed in Section 54685.7. The criteria shall be verified by the school district's governing board prior to submission of the written application.

- Written Application

54685.7. The criteria to be used in selecting school sites as participants shall be based on the extent to which the school demonstrates all of the following:

- School Site Selection Criteria

(1) A need for the program.

(2) The ability and commitment to disseminate the model program, to serve as a model site, to release a teacher certified as a trainer in the program, to collect evaluation data, and to demonstrate an interest to continue to employ successful programs after termination of state funding.

54685.8. The school district or school sites selected may accept or reject, at their option, designation as participating sites or demonstration models.

- Accept/Reject Demonstration Model Designation

54685.9. The techniques of the Early Prevention of School Failure Model Program which shall be included in the Early Intervention for School Success Program include all of the following:

- Techniques

(1) The use of a child study team approach for the assessment and identification of preacademic learning deficiencies in children between the ages of four to seven, inclusive, as appropriate.

(2) The use of screening instruments provided in English, Spanish, Laotian, Vietnamese, and Cambodian languages, for determination of students' developmental levels in language, auditory, visual, fine motor, and gross motor skills, adapted to meet California needs.

(3) The selection and application of educational materials appropriate to students' identified developmental levels.

54686. Training received by a teacher in techniques for the Early Intervention for School Success Program shall apply toward the requirement of professional growth, as required by subdivision (b) of Section 44277.

- Professional Growth

54686.1. The county superintendent of schools selected pursuant to Section 54685.2, commencing with the 1987-88 fiscal year, shall annually report to the Legislature on the status of the implementation of the program, and shall include,

- Report to Legislature

but not be limited to, the number of school personnel trained, the number of schools implementing the program, the number of certified trainers available, and data on the impact of the program on student performance. At the end of the third year the Legislative Analyst shall evaluate the program and report his or her findings to the Legislature.

54686.2. This article shall remain in effect only until July 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted and becomes operative before July 1, 1991, deletes or extends that date.

- Repeal Date of July 1, 1991

## STATE SPECIAL SCHOOLS EXCESS COST PROVISION

(Education Code - Part 32)

(AB 61 - Chapter 1093, Statutes of 1981)

59300. Notwithstanding any provision of this part to the contrary, the district of residence of the parent or guardian of any pupil attending a state-operated school pursuant to this part, excluding day pupils, shall pay the school of attendance for each pupil an amount equal to 10 percent of the excess annual cost of education of pupils attending a state-operated school pursuant to this part.

- Ten Percent Excess Cost

## SPECIAL EDUCATION PROGRAM SUNSET DATE

(Education Code - Part 34)

(SB 2059 - Chapter 1508, Statutes of 1988)

62000.8. The special education program shall sunset on June 30, 1993.

- Sunset Date of June 30, 1993

# INTERAGENCY RESPONSIBILITIES FOR RELATED SERVICES

(Government Code)

(AB 3632 - Chapter 1747, Statutes of 1984, As
Amended by AB 882 - Chapter 1274, Statutes of
1985, As Amended by AB 3012 - Chapter 1133,
Statutes of 1986, As Amended by AB 1744,
Chapter 677, Statutes of 1989)

- Legislative Findings and Intent

SECTION 1. The Legislature hereby finds and declares that a number of state and federal programs make funds available for the provision of education and related services to children with handicaps who are of school age. The Legislature further finds and declares that California has not maximized, or sufficiently coordinated existing state programs, in providing supportive services which are necessary to assist a handicapped child to benefit from special education.

It is the intent of the Legislature that existing services rendered by state and local government agencies serving handicapped children be maximized and coordinated. It is the further intent of the Legislature that specific state and local interagency responsibilities be clarified by this act in order to better serve the educational needs of the state's handicapped children.

## CHAPTER 26.5. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO HANDICAPPED CHILDREN

- Joint Responsibility

7570. Ensuring maximum utilization of all state and federal resources available to provide handicapped children, as defined in subsection (1) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in subsection (17) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to handicapped children, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

- Secretary May Designate Department to Assume Responsibilities

7571. The Secretary of Health and Welfare may designate a department of state government to

165

assume the responsibilities described in Section 7570. The secretary, or his or her designee, shall also designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

- Child Assessed in All Areas Related to Suspected Handicap

7572. (a) A child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of, occupational therapy, physical therapy, psychotherapy, and other mental health assessments. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

- OT/PT Assessments

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services in consultation with the State Department of Education.

- Psychotherapy Assessment

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, pursuant to this chapter.

- Adding to IEP

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

- Related Service Recommendation

(1) Whenever an assessment has been conducted pursuant to subdivision (b) or (c), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the

individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

- Independent Assessment

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivisions (b) and (c). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

- Resolving Recommendation Disputes

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code.

- Participation in Developing IEP

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

- Expanded IEP Team and Residential Recommendations

7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department.

- Review Assessment

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

- IEP Content

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the

county welfare department by agreement between the county welfare department and the designated mental health department. The mental health department shall retain financial responsibility for provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

- LEA Responsibility

7573. The Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program. Local education agencies shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

- Responsibility for Provision of OT/PT

7575. (a) (1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, which the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

- Determination for Medically Necessary Therapy

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The

172

written report shall include the following:

(1) The diagnosed neuromuscular, musculoskeletal, or physical handicapping condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

(4) The relationship of the medical disability to the pupil's need for special education and related services.

(5) Relevant medical records.

- Providing the Service

(c) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

- Space and Equipment

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

- Services of a Home Health Aide

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life-supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

- Responsibility for Provisions of Psychotherapy

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any community mental health service designated by the State Department of Mental Health, shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

- Assessment Procedures for Rehabilitation Services

7577. (a) The State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools to help them make the transition from high school to work. The assessment procedures shall be distributed to local education agencies.

- Project Workability

(b) The State Department of Rehabilitation shall maintain the current level of services to secondary school pupils in project work ability and shall seek ways to augment services with funds which may become available.

- Programs for State Hospital Children

7578. The provision of special education programs and related services for handicapped children residing in state hospitals shall be ensured by the State Department of Developmental Services, the State Department of Mental Health and the Superintendent of Public Instruction in accordance with Chapter 8 (commencing with Section 56850) of Part 30 of Division 4 of Title 2 of the Education Code.

- Prior Notification on Residential Placements

7579. (a) Prior to placing a handicapped child or a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in a special education local plan area where the residential facility is located.

- Involvement of SELPA Administrator

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

- Encourage Communication

- Do Not Hinder Placement

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of this section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

7579.1. (a) Prior to the discharge of any handicapped child who has an active individualized education program from a public hospital, proprietary hospital, or residential medical facility pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2 of Part 30 of the Education Code, a licensed children's institution or foster family home pursuant to Article 5 (commencing with Section 56155) of Chapter 2 of Part 30 of the Education Code, or a state hospital for the developmentally disabled or mentally disordered, the following shall occur:

- Prior to Discharging* Handicapped Child

(1) The operator of the hospital or medical facility, or the agency that placed the child in the licensed children's institution or foster family home, shall, at least 10 days prior to the discharge of a handicapped child, notify in writing the local educational agency in which the special education program for the child is being provided, and the receiving special education local plan area where the child is being transferred, of the impending discharge.

- Notify of Impending Discharge

(2) The operator or placing agency, as part of the written notification, shall provide the receiving special education local plan area with a copy of the child's individualized education program, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's individualized education program in the receiving special education local plan area.

- Provide Receiving Special Education Local Plan Area with a Copy of Child's IEP

(b) Once the handicapped child has been discharged, it shall be the responsibility of the receiving local educational agency to ensure that the handicapped child receives an appropriate educational placement that commences without delay upon his or her discharge from the hospital, institution, facility, or foster family home in accordance with Section 56325 of the Education Code. Responsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which the child resides pursuant to Sections 56156.5, 56156.6, and 56167 of the Education Code.

- Ensure that the Child Receives an Appropriate Educational Placement Without Delay

(c) Special education local plan area directors shall document instances where the procedures in

- Document Instances Where Procedures Are Not Being Adhered To

*(Section 7579.1 Added in 1989)

subdivision (a) are not being adhered to and report these instances to the Superintendent of Public Instruction.

- Community Care Facility's Impact on Education

7580. Prior to licensing a community care facility, as defined in Section 1502 of the Health and Safety Code, in which a handicapped child may be placed, or prior to a modification of such a facility's license to permit expansion of the facility, the State Department of Social Services shall consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

- Responsibility for Residential/Noneducational Costs

7581. The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent.

- Exemption from Financial Eligibility Standards/ Repayment

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Services or the State Department of Mental Health, or their designated local agencies, rendered to a child referred by a local education agency for an assessment or a handicapped child with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

- Definition of "Handicapped Children"

7584. As used in this chapter, "handicapped children", "child," or "pupil" means individuals with exceptional needs as defined in Section 56026 of the Education Code.

- Failure to Provide a Service

7585. (a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

- Superintendent and Secretary of Health and Welfare Meet to Resolve Issue

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

- Submit Unresolved Issue to Office of Administrative Hearings

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

- Decision Binding

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

- Appeal

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

- Services Pending Dispute Resolution

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7586.

- Due Process Hearing

(h) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall submit to the Legislature on July 1 of each year a joint report on the written notifications received pursuant to subdivision (a) on the failure of departments or their designated local agencies to provide occupational therapy, physical therapy, or psychotherapy. This joint report shall include, but not be limited to, a description of the nature of these disputes, a summary of the outcomes of these disputes, and any recommendations for changes to the procedure set forth in subdivision (a) or with regard to any interagency agreement and

- Report to Legislature

regulations which might exist as a result of the implementation of this chapter.

(i) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

- Procedural Safeguards

7586. (a) All state departments, and their designated local agencies shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

- Notification of Hearing Request

(b) Upon receipt of a request for a due process hearing involving an agency other than an educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies.

- One Hearing

(c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

- Restriction on Public Agency Hearing Requests

(d) No public agency, state or local, may request a due process hearing pursuant to Section 56501 of the Education Code against another public agency.

- Report on Implementation of Law

7586.5. Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

- In-Service Training

7586.7. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly prepare and implement within existing resources a plan for in-service training of state and local personnel responsible for implementing the provisions of this chapter.

7587. By January 1, 1986, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of handicapped children. The directors of each department shall adopt all regulations pursuant to this section as emergency regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law and shall not be subject to automatic repeal until the final regulations take effect on or before May 1, 1987, and the final regulations shall become effective immediately upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

- Regulations

7588. This chapter shall become operative on July 1, 1986, except Section 7583 which shall become operative on January 1, 1985.

- July 1, 1986 Operative Date

# CALIFORNIA CHILDREN'S SERVICE MEDICAL THERAPY

(Health and Safety Code)

(AB 3012 - Chapter 1133, Statutes of 1986)

- Medically Necessary OT/PT

255.3. When the California Children's Service medical therapy unit conference team, based on a medical referral recommending medically necessary occupational or physical therapy in accordance with subdivision (b) of Section 7575 of the Government Code, finds that a handicapped child, as defined in Section 250.5, needs medically necessary occupational or physical therapy, that child shall be determined to be eligible for therapy services. If the California Children's Services medical consultant disagrees with such a determination of eligibility by the California Children's Services medical therapy unit conference team, the medical consultant shall communicate with the conference team to ask for further justification of its determination, and shall weigh the conference team's arguments in support of its decision in reaching his or her own determination.

This section shall not change eligibility criteria for the California Children's Services programs as described in Sections 250.5 and 253.5.

This section shall not apply to children diagnosed as specific learning disabled, unless they otherwise meet the eligibility criteria of the California Children's Services.

# SERIOUSLY EMOTIONALLY DISTURBED OUT-OF-HOME CARE

(Welfare and Institutions Code)

(AB 882 - Chapter 1274, Statutes of 1985)

## CHAPTER 6. SERIOUSLY EMOTIONALLY DISTURBED CHILDREN: 24-HOUR OUT-OF-HOME CARE

- 24-HOUR OUT-OF-HOME CARE

- Payments

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act.

(c) Payments shall be based on rates established in accordance with Sections 11461, 11462, and 11463 and shall be based on providers' actual allowable costs.

(d) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

- Issued by County Welfare Department

18351. (a) Payments shall be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The county welfare department located in the same county as the county mental health agency designated to provide case management services shall be responsible for payment under this section. Authorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education.

(b) The county welfare department shall submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed children for 24-hour out-of-home care.

- Agreements for Single Payment

18352. County welfare departments may, at their option and with approval of the State Department of Social Services and other appropriate agencies, enter into agreements with other local agencies for the delivery of a single payment for all related services for a seriously emotionally disturbed child to a residential care provider.

- Provide Assistance in Identifying Facility

18353. When an individualized education program calls for 24-hour out-of-home care, the county welfare department shall provide assistance, as necessary, in identifying a facility suited to the child's needs and in placing the child in the facility.

- Disputes Regarding the Provider's Eligibility for Payment

18354. (a) If a provider of 24-hour out-of-home care to a child who has been placed pursuant to Section 7572.5 of the Government Code in a 24-hour out-of-home placement disputes an action of the designated county mental health agency regarding the providers eligibility for payment, the provider may request a review of the issue by the designated county mental health agency. Designated county mental health agencies may establish policies and procedures, as may be necessary, to implement this subdivision.

(b) If the issue remains unresolved after the review by the designated county mental health agency, then the provider may request a review of the issue by the State Department of Mental Health. The Director of Mental Health may establish policies and procedures, as may be necessary, to implement this subdivision. The review under this subdivision shall be limited to the issue of whether the eligibility for payment criteria established by the State Department of Mental Health was correctly applied.

- Separate Appropriation

18355. Notwithstanding any other provision of the law, 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both 24-hour out-of-home care payment and local administrative costs. Reimbursement for 24-hour out-of-home care payment costs shall be from that appropriation, subject to the same sharing ratio as prescribed in subdivision (c) of Section 15200, and available funds. Reimbursements for local administrative costs shall also be from that appropriation, subject to the same sharing ratio as prescribed in Section 15204.2 for the Aid to Families with Dependent Children program, and available funds.

# EARLY INTERVENTION SERVICES ACT

(Government Code)

(AB 114 - Chapter 26, Statutes of 1985)

## TITLE 14. CALIFORNIA EARLY INTERVENTION SERVICES ACT

## CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- GENERAL PROVISIONS

### Article 1. General Provisions

- Title

95000. This title may be cited as the California Early Intervention Services Act.

- Legislative Findings

95001. The Legislature finds that handicapped and high-risk infants now survive the newborn period due to greatly improved surgical and medical care services; however, in many communities, services which provide the careful nurturing and stimulation that these infants need to develop to their potential are not available. The Legislature hereby finds and declares that individualized early intervention services for infants, who are at high risk or who have a handicapping condition, and for their families, which provide educational, developmental, health, and social services with active parent involvement, can significantly reduce the potential impact of many handicapping conditions and positively influence later development when the child reaches school age.

The Legislature further finds that infants have unique needs and therefore require both a unique service delivery model, which may be different from any system currently in place in California, and unique program and personnel standards specific to the needs of infants who are at high risk or who have a handicapping condition and their families.

The Legislature further acknowledges that early intervention services are cost-effective, in that these services frequently make productive citizens of children and eliminate the far greater costs of long-term remedial treatment for, and unnecessary lifelong dependency on others.

- Legislative Intent

95002. It is the intent of the Legislature that those agencies which possess the greatest expertise in providing early intervention services to infants and their families in the past continue to provide these services. It is the further intent of the Legislature that existing early intervention services rendered by state and local public agencies and private agencies be coordinated and maximized through interagency services with specific state and local government responsibilities.

- Legislative Intent

95003. It is the intent of the Legislature that the State Department of Health Services, the State Department of Developmental Services, the State Department of Mental Health, the State Department of Social Services, and the State Department of Education work together to provide coordinated, interagency services to handicapped and high-risk infants and their families.

# LIST OF SPECIAL EDUCATION CODE SECTIONS/LEGISLATIVE BILLS
# EDUCATION CODE - PART 30. SPECIAL EDUCATION PROGRAMS

The following is a list of special education code sections and the most recent legislative bills which affected them.*

| EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER | EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER | EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER |
|---|---|---|---|---|---|
| 56000 | SB 1870 | 56130 | SB 1870 | 56192 | SB 1870 |
| 56000.5 | AB 1892 | 56131 | SB 1870 | 56193 | SB 1870 |
| 56001 | AB 2666 | 56132 | SB 1870 | 56194 | SB 998 |
| 56020 | SB 1870 | 56133 | AB 3075 | 56200 | SB 998 |
| 56021 | SB 1870 | 56134 | SB 769 | 56201 | SB 2059 |
| 56022 | SB 1870 | 56135 | AB 817 | 56220 | SB 998 |
| 56023 | SB 1870 | 56136 | AB 2652 | 56221 | AB 2666 |
| 56024 | SB 1870 | 56137 | AB 1892 | 56222 | AB 817 |
| 56025 | SB 1870 | 56140 | SB 585 | 56240 | SB 998 |
| 56026 | AB 2658 | 56150 | AB 456 | 56241 | SB 1870 |
| 56026.5 | AB 2652 | 56155 | AB 817 | 56242 | AB 3513 |
| 56027 | SB 998 | 56155.5 | AB 456 | 56243 | SB 2403 |
| 56028 | SB 1870 | 56156 | SB 998 | 56300 | SB 998 |
| 56029 | SB 1870 | 56156.5 | SB 998 | 56301 | SB 998 |
| 56030 | SB 1870 | 56156.6 | AB 817 | 56302 | SB 998 |
| 56030.5 | SB 769 | 56157 | SB 998 | 56303 | SB 1870 |
| 56031 | SB 1870 | 56159 | SB 998 | 56320 | AB 2652 |
| 56033 | SB 1870 | 56160 | AB 817 | 56321 | SB 1345 |
| 56040 | AB 3075 | 56161 | AB 1537 | 56322 | SB 998 |
| 56050 | AB 817 | 56162 | SB 1345 | 56323 | SB 1870 |
| 56060 | SB 1870 | 56163 | AB 817 | 56324 | AB 3075 |
| 56061 | SB 1870 | 56164 | AB 817 | 56325 | AB 456 |
| 56062 | SB 1870 | 56165 | AB 817 | 56326 | SB 1870 |
| 56063 | SB 1870 | 56166 | AB 817 | 56327 | AB 2652 |
| 56100 | SB 2059 | 56166.5 | AB 817 | 56328 | SB 998 |
| 56101 | SB 998 | 56167 | AB 1155 | 56329 | SB 1345 |
| 56120 | SB 1870 | 56167.5 | AB 3246 | 56333 | AB 3075 |
| 56121 | SB 1870 | 56168 | AB 3246 | 56337 | SB 1870 |
| 56122 | SB 1870 | 56169 | AB 3246 | 56338 | AB 3075 |
| 56123 | SB 1870 | 56169.5 | AB 3246 | 56340 | SB 998 |
| 56124 | SB 1870 | 56169.7 | AB 3246 | 56341 | SB 2059 |
| 56125 | SB 1870 | 56170 | SB 998 | 56342 | SB 998 |
| 56126 | SB 1870 | 56171 | AB 1055 | 56343 | SB 2403 |
| 56127 | SB 1870 | 56172 | SB 998 | 56343.5 | AB 456 |
| 56128 | SB 1870 | 56190 | SB 1870 | 56344 | SB 998 |
| 56129 | SB 998 | 56191 | AB 1055 | 56345 | SB 998 |

*Bills Enacted in 1980: SB 1870, AB 1202, AB 3043, AB 3075
*Bills Enacted in 1981: SB 769, SB 1192, AB 159, AB 817, AB 933, AB 1055
*Bills Enacted in 1982: SB 386, SB 1345, AB 2652
*Bills Enacted in 1983: SB 679, SB 813, AB 1892
*Bills Enacted in 1984: SB 1379, SB 1634
*Bills Enacted in 1985: SB 1264, AB 456, AB 982, AB 1537, AB 1807, AB 2557
*Bills Enacted in 1986: SB 656, SB 2403, AB 3011, AB 3246, AB 3263, AB 4074
*Bills Enacted in 1987: SB 998, AB 93, AB 1155, AB 2386, AB 2666
*Bills Enacted in 1988: SB 2059, AB 2658, AB 3513

| EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER |
|---|---|
| 56345.5 | SB 998 |
| 56346 | SB 1870 |
| 56347 | SB 2403 |
| 56360 | SB 998 |
| 56361 | SB 1870 |
| 56361.2 | AB 3246 |
| 56361.5 | SB 998 |
| 56362 | AB 456 |
| 56362.1 | AB 1055 |
| 56362.5 | SB 1634 |
| 56362.7 | SB 386 |
| 56363 | AB 1892 |
| 56363.3 | SB 998 |
| 56363.5 | SB 998 |
| 56364 | SB 1192 |
| 56364.1 | AB 2652 |
| 56364.5 | SB 998 |
| 56365 | SB 998 |
| 56365.5 | SB 998 |
| 56366 | SB 998 |
| 56366.1 | SB 998 |
| 56366.5 | SB 998 |
| 56367 | SB 1345 |
| 56368 | SB 1345 |
| 56369 | SB 998 |
| 56380 | SB 998 |
| 56381 | AB 3075 |
| 56400 | AB 456 |
| 56425 | AB 3246 |
| 56425.5 | AB 1155 |
| 56426 | AB 3246 |
| 56426.1 | AB 3246 |
| 56426.2 | AB 3246 |
| 56426.25 | AB 3246 |
| 56426.3 | AB 3246 |
| 56426.4 | AB 3246 |
| 56426.5 | AB 3246 |
| 56426.6 | AB 3246 |
| 56426.7 | AB 3246 |
| 56426.8 | AB 3246 |
| 56426.9 | AB 3246 |
| 56427 | AB 3246 |
| 56428 | SB 1264 |
| 56429 | AB 3246 |
| 56430 | AB 3246 |
| 56431 | AB 3246 |
| 56440 | AB 2658 |
| 56441 | AB 2666 |
| 56441.1 | AB 2666 |
| 56441.2 | AB 2666 |
| 56441.3 | AB 2666 |
| 56441.4 | AB 2666 |
| 56441.5 | AB 2666 |
| 56441.6 | AB 2666 |
| 56441.7 | AB 2666 |
| 56441.8 | AB 2666 |
| 56441.9 | AB 2666 |
| 56441.10 | SB 2059 |
| 56441.11 | AB 2666 |
| 56441.12 | AB 2666 |
| 56441.13 | AB 2666 |
| 56441.14 | AB 2666 |
| 56442 | AB 2666 |
| 56443 | AB 2666 |
| 56444 | AB 2666 |
| 56445 | AB 2666 |
| 56446 | AB 2666 |
| 56447 | AB 2666 |
| 56447.1 | AB 2666 |
| 56448 | AB 2666 |
| 56449 | AB 2666 |
| 56452 | AB 2386 |
| 56453 | AB 3075 |
| 56454 | AB 2386 |
| 56456 | AB 2386 |
| 56460 | AB 2386 |
| 56461 | AB 2386 |
| 56462 | AB 2386 |
| 56463 | AB 2386 |
| 56470 | AB 2386 |
| 56471 | SB 2059 |
| 56472 | AB 2386 |
| 56473 | AB 2386 |
| 56474 | AB 2386 |
| 56475 | AB 1155 |
| 56500 | SB 998 |
| 56500.1 | AB 3043 |
| 56500.2 | AB 3043 |
| 56501 | AB 3075 |
| 56502 | AB 3075 |
| 56503 | AB 159 |
| 56504 | SB 1345 |
| 56505 | SB 1345 |
| 56506 | AB 3075 |
| 56507 | SB 1345 |
| 56600 | SB 2059 |
| 56600.5 | SB 2059 |
| 56601 | SB 2059 |
| 56602 | SB 2059 |
| 56603 | SB 1870 |
| 56604 | SB 2059 |
| 56605 | SB 2059 |
| 56606 | SB 998 |
| 56700 | SB 998 |
| 56701 | SB 1870 |
| 56702 | SB 1870 |
| 56710 | SB 1870 |
| 56711 | SB 1264 |
| 56712 | SB 1345 |
| 56713 | SB 1345 |
| 56714 | SB 1870 |
| 56720 | SB 1870 |
| 56721 | SB 3075 |
| 56722 | AB 1807 |
| 56723 | SB 813 |
| 56724 | AB 3075 |
| 56725 | AB 3075 |
| 56726 | SB 769 |
| 56727 | AB 456 |
| 56728 | AB 2658 |
| 56728.5 | AB 1537 |
| 56728.6 | AB 3011 |
| 56728.8 | AB 1155 |
| 56730 | SB 1870 |
| 56730.5 | SB 1264 |
| 56730.6 | SB 769 |
| 56731 | SB 769 |
| 56732 | SB 769 |
| 56733 | SB 1870 |
| 56734 | SB 769 |
| 56735 | SB 769 |
| 56736 | SB 1345 |
| 56737 | SB 1345 |
| 56738 | SB 769 |
| 56739 | AB 1892 |
| 56740 | AB 3075 |
| 56741 | AB 3263 |
| 56742 | SB 769 |
| 56743 | SB 769 |
| 56750 | SB 1870 |
| 56751 | SB 769 |
| 56752 | AB 3075 |
| 56753 | AB 3075 |
| 56754 | AB 3075 |
| 56760 | SB 998 |
| 56761 | SB 998 |
| 56762 | SB 1870 |
| 56771 | SB 1264 |
| 56775 | AB 1537 |
| 56775.5 | AB 1537 |
| 56776 | AB 1537 |
| 56777 | AB 1537 |
| 56780 | AB 456 |
| 56781 | AB 456 |
| 56782 | AB 456 |
| 56783 | AB 456 |
| 56790 | SB 1870 |
| 56791 | SB 1870 |
| 56792 | SB 1870 |

| EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER | EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER | EDUCATION CODE SECTION | LEGISLATIVE BILL NUMBER |
|---|---|---|---|---|---|
| 56820 | SB 1870 | | | | |
| 56821 | SB 1870 | | | | |
| 56822 | SB 1870 | | | | |
| 56823 | SB 998 | | | | |
| 56824 | SB 998 | | | | |
| 56825 | SB 998 | | | | |
| 56826 | SB 998 | | | | |
| 56827 | AB 93 | | | | |
| 56828 | AB 4074 | | | | |
| 56829 | SB 769 | | | | |
| 56830 | SB 656 | | | | |
| 56850 | AB 1202 | | | | |
| 56851 | SB 998 | | | | |
| 56852 | SB 1345 | | | | |
| 56852.5 | SB 1345 | | | | |
| 56853 | SB 1345 | | | | |
| 56854 | SB 1345 | | | | |
| 56855 | AB 1202 | | | | |
| 56856 | SB 1345 | | | | |
| 56857 | SB 679 | | | | |
| 56857.5 | SB 1345 | | | | |
| 56858 | AB 982 | | | | |
| 56858.5 | SB 1345 | | | | |
| 56858.7 | SB 1345 | | | | |
| 56859 | SB 1345 | | | | |
| 56860 | SB 1345 | | | | |
| 56862 | SB 679 | | | | |
| 56863 | SB 1345 | | | | |
| 56864 | SB 1345 | | | | |
| 56865 | SB 1345 | | | | |
| 56875 | AB 817 | | | | |
| 56876 | AB 817 | | | | |
| 56877 | AB 817 | | | | |
| 56878 | AB 817 | | | | |
| 56879 | AB 817 | | | | |
| 56880 | AB 817 | | | | |
| 56881 | AB 817 | | | | |
| 56882 | AB 817 | | | | |
| 56883 | AB 817 | | | | |
| 56884 | AB 817 | | | | |
| 56885 | AB 817 | | | | |

# THE FOLLOWING STATUTES HAVE MODIFIED SPECIAL EDUCATION CODE SECTIONS IN PART 30 OF THE EDUCATION CODE SINCE 1980:

| BILL/AUTHOR | CHAPTER NUMBER/EFFECTIVE DATE |
|---|---|
| 1980 | |
| Senate Bill 1870 (Rodda) | Chapter 797 - Statutes of 1980<br>July 28, 1980 |
| Assembly Bill 3075 (Papan) | Chapter 1353 - Statutes of 1980<br>September 30, 1980 |
| Assembly Bill 507 (Chacon) | Chapter 1339 - Statutes of 1980<br>January 1, 1981 |
| Assembly Bill 1202 (Hart) | Chapter 1191 - Statutes of 1980<br>September 29, 1980 |
| Assembly Bill 2286 (Kapiloff) | Chapter 1325 - Statutes of 1980<br>January 1, 1981 |
| Assembly Bill 2394 (Egeland) | Chapter 1276 - Statutes of 1980<br>January 1, 1981 |
| Assembly Bill 3043 (Vasconcellos) | Chapter 1373 - Statutes of 1980<br>January 1, 1981 |
| Assembly Bill 3269 (Hart) | Chapter 1329 - Statutes of 1980<br>January 1, 1981 |
| Senate Bill 1616 (Watson) | Chapter 1218 - Statutes of 1980<br>January 1, 1981 |
| 1981 | |
| Senate Bill 769 (Sieroty) | Chapter 1094 - Statutes of 1981<br>January 1, 1982, With Computation or Recomputations of Allowances Deemed Operative for Entire 1981-82 Fiscal Year |
| Senate Bill 1192 (Rains) | Chapter 714 - Statutes of 1981<br>January 1, 1982 |
| Assembly Bill 61 (L. Greene) | Chapter 1093 - Statutes of 1981<br>January 1, 1982 |
| Assembly Bill 92 (Lehman) | Chapter 1176 - Statutes of 1981<br>January 1, 1982 |

| BILL/AUTHOR | | CHAPTER NUMBER/EFFECTIVE DATE |
|---|---|---|
| Assembly Bill 159 (Kapiloff) | - | Chapter 149 - Statutes of 1981<br>January 1, 1982 |
| Assembly Bill 817 (Papan) | - | Chapter 1044 - Statutes of 1981<br>January 1, 1982/July 1, 1982 |
| Assembly Bill 933 (Kapiloff) | - | Chapter 893 - Statutes of 1981<br>January 1, 1982 |
| Assembly Bill 1055 (Farr) | - | Chapter 972 - Statutes of 1981<br>January 1, 1982 |
| 1982 | | |
| Senate Bill 386 (Stiern) | - | Chapter 866 - Statutes of 1982<br>September 9, 1982 |
| Senate Bill 1345 (Sieroty) | - | Chapter 1201 - Statutes of 1982<br>September 21, 1982 |
| Senate Bill 2058 (Rains) | - | Chapter 466 - Statutes of 1982<br>January 1, 1983 |
| Assembly Bill 1124 (Hughes) | - | Chapter 11 - Statutes of 1982<br>January 27, 1983 |
| Assembly Bill 1253 (Vasconcellos) | - | Chapter 115 - Statutes of 1982<br>March 12, 1982 |
| Assembly Bill 2652 (Moore) | - | Chapter 1334 - Statutes of 1982<br>January 1, 1983 |
| Assembly Bill 3049 (Kapiloff) | - | Chapter 644 - Statutes of 1982<br>January 1, 1983 |
| 1983 | | |
| Senate Bill 679 (Seymour) | - | Chapter 922 - Statutes of 1983<br>September 19, 1983 |
| Senate Bill 813 (Hart) | - | Chapter 498 - Statutes of 1983<br>July 28, 1983 |
| Assembly Bill 1063 (Hughes) | - | Chapter 501 - Statutes of 1983<br>July 28, 1983 |
| Assembly Bill 1892 (Felando) | - | Chapter 1099 - Statutes of 1983<br>January 1, 1984 |

| BILL/AUTHOR | | CHAPTER NUMBER/EFFECTIVE DATE |
|---|---|---|
| 1984 | | |
| Senate Bill 585 (Seymour) | - | Chapter 1668 - Statutes of 1984<br>January 1, 1985 |
| Senate Bill 1379 (Alquist) | - | Chapter 268 - Statutes of 1984<br>June 29, 1984 |
| Senate Bill 1634 (Keene) | - | Chapter 144 - Statutes of 1984<br>January 1, 1985 |
| Assembly Bill 2841 (Felando) | - | Chapter 1677 - Statutes of 1984<br>September 30, 1984 |
| Assembly Bill 3007 (Mountjoy) | - | Chapter 1717 - Statutes of 1984<br>September 30, 1984 |
| 1985 | | |
| Senate Bill 1264 (Seymour) | - | Chapter 1603 - Statutes of 1985<br>October 2, 1985 |
| Assembly Bill 72 (Felando) | - | Chapter 55 - Statutes of 1985<br>June 4, 1985 |
| Assembly Bill 456 (Papan) | - | Chapter 795 - Statutes of 1985<br>January 1, 1986 |
| Assembly Bill 982 (O'Connell) | - | Chapter 1546 - Statutes of 1985<br>January 1, 1986 |
| Assembly Bill 1537 (Farr) | - | Chapter 999 - Statutes of 1985<br>September 25, 1985 |
| Assembly Bill 1807 (Harris) | - | Chapter 106 - Statutes of 1985<br>January 1, 1986 |
| Assembly Bill 2557 (Papan) | - | Chapter 115 - Statutes of 1985<br>June 28, 1985 |
| 1986 | | |
| Senate Bill 656 (Seymour) | - | Chapter 7 - Statutes of 1986<br>February 14, 1986 |
| Senate Bill 2403 (Seymour) | - | Chapter 233 - Statutes of 1986<br>July 1, 1986 |
| Assembly Bill 3011 (Farr) | - | Chapter 374 - Statutes of 1986<br>July 16, 1986 |

| BILL/AUTHOR | | CHAPTER NUMBER/EFFECTIVE DATE |
|---|---|---|
| Assembly Bill 3246 (Papan) | - | Chapter 1296 - Statutes of 1986<br>January 1, 1987/July 1, 1987 |
| Assembly Bill 3263 (O'Connell) | - | Chapter 1124 - Statutes of 1986<br>January 1, 1987 |
| Assembly Bill 4074 (Allen) | - | Chapter 703 - Statutes of 1986<br>January 1, 1987 |
| 1987 | | |
| Assembly Bill 93 (O'Connell) | - | Chapter 917 - Statutes of 1987<br>January 1, 1988 |
| Assembly Bill 1155 (Johnston) | - | Chapter 393 - Statutes of 1987<br>September 2, 1987 |
| Assembly Bill 2386 (Allen) | - | Chapter 1484 - Statutes of 1987<br>January 1, 1988 |
| Assembly Bill 2666 (Hannigan) | - | Chapter 311 - Statutes of 1987<br>July 29, 1987 |
| Senate Bill 998 (Hart) | - | Chapter 1452 - Statutes of 1987<br>January 1, 1988 |
| 1988 | | |
| Assembly Bill 2658 (Speier) | - | Chapter 35 - Statutes of 1988<br>March 17, 1988 |
| Assembly Bill 3513 (N. Waters) | - | Chapter 449 - Statutes of 1988<br>January 1, 1989 |
| Senate Bill 2059 (Seymour) | - | Chapter 1508 - Statutes of 1988<br>January 1, 1989 |

# CALIFORNIA CODE OF REGULATIONS - TITLE 5 SPECIAL EDUCATION

## DIVISION 3. HANDICAPPED CHILDREN

## CHAPTER 1. SPECIAL EDUCATION

### Article 1. General Provisions

- GENERAL PROVISIONS

- Scope

3000. (a) This chapter applies to those special education programs which are administered under a local plan as defined in Section 56027 and Part 30 of the Education Code. Provisions of this chapter shall be construed as supplemental to, and in the context of, Federal laws and regulations relating to individuals with exceptional needs in effect on January 1, 1981, and state laws and regulations relating to individuals with exceptional needs. The intent of this chapter is to assure conformity with the Education for All Handicapped Children Act, Public Law 94-142 (20 USC 1401, et seq.) and Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (29 USC 794), and their implementing regulations including Title 34, Code of Federal Regulations, Sections 300.1 et seq.; Sections 104.1 et seq.; and Sections 76.1 et seq.

(b) A school district, special education local plan area, or county office shall use federal, state, local, and private sources of support which are available to provide services as specified in an individualized education program.

(c) Nothing in this chapter relieves any other agency from an otherwise valid obligation to provide or pay for services for individuals with exceptional needs. Clarification and specificity of responsibilities shall be included in but not limited to interagency agreements.

[Authority cited: Section 56100(a), (i), and (j), Education Code] [Reference: Sections 56000-56001, Education Code; and 34 CFR 300.301]

- Definitions

3001. In addition to those found in Education Code Sections 56020-56033, Public Law 94-142 (20 USC 1401 et seq.), and Title 34, Code of Federal Regulations, Part 300, the following definitions are provided:

- Applicant

(a) "Applicant" means an individual, firm, partnership, association, or corporation who has made application for certification as a nonpublic, nonsectarian school, or agency.

- Appropriate Education

(b) "Appropriate education," as in 'free, appropriate, public education,' is an educational program and related service(s) as determined on an individual basis which meets the unique needs of each individual with exceptional needs. Such educational program and related service(s) shall be based on goals and objectives as specified in an individualized education program and determined through the process of assessment and IEP planning in compliance with state and federal laws and regulations. Such an educational program shall provide the equal opportunity for each individual with exceptional needs to achieve his or her full potential, commensurate with the opportunity provided to other pupils.

- Certification

(c) "Certification" means authorization by the Superintendent for a nonpublic school or nonpublic agency to service individuals with exceptional needs under a contract pursuant to the provisions of Education Code Section 56366(c).

- Contract

(d) "Contract" means the legal document which binds the public education agency and the nonpublic school or nonpublic agency.

- Contracting Education Agency

(e) "Contracting education agency," as used in this chapter, means school district, special education local plan area, or county office.

- Credential

(f) "Credential" means a valid credential in special education or pupil personnel services issued by the California State Commission on Teacher Credentialing.

- Dual Enrollment

(g) "Dual enrollment" means the concurrent attendance of the pupil in a public education agency and a nonpublic school and/or a nonpublic agency.

- Feasible

(h) "Feasible" as used in Education Code Section 56363(a) means the individualized education program team:

(1) has determined the regular class teacher, special class teacher, and/or resource specialist possesses the necessary competencies and credentials/certificates to provide the designated instruction and service specified in the individualized education program, and

(2) has considered the time and activities required to prepare for and provide the designated instruction and service by the regular class teacher, special class teacher, and/or resource specialist.

- Instructional Day

(i) "Instructional day" shall be the same period of time as constitutes the regular school day for that chronological peer group unless otherwise specified in the individualized education program.

- Intensive Special Education and Services

(j) "Intensive special education and services" means instruction and services without which the individual would be unable to develop the skills necessary to achieve educational goals appropriate to his or her developmental and cognitive level or potential. Such instruction and services may be provided in any of the program options as stated in Education Code Section 56361.

- License

(k) "License" means a valid license issued by the Board of Medical Quality Assurance, Board of Consumer Affairs, Board of Behavioral Sciences Examiners, or other state licensing office authorized to grant licenses which may be applicable to providing services for individuals with exceptional needs. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national and/or state level which has standards established for the certificate is equivalent to a license.

- Linguistically Appropriate Goals, Objectives and Programs

(l) Linguistically appropriate goals, objectives, and programs means:

(1)(A) Those activities which lead to the development of English language proficiency through the use of the primary language of the individual with exceptional needs; and

(B) Those instructional systems either at the elementary or secondary level which meet the language development needs of the limited English proficient pupil by building on the pupil's existing language skills in order to develop English proficiency.

(2) For pupils whose primary language is other than English, nothing in this section shall preclude the individual learning program, as defined by Section 52163 of the Education Code, from being included in the pupil's individualized education program.

(3) For pupils whose primary language is other than English, and whose potential for learning a second language, as determined by the individualized education program team, is severely limited, nothing in this section shall preclude the individualized education program team from determining that instruction may be provided in the pupil's primary language, provided that the IEP team periodically but not less than annually reconsiders the pupil's ability to receive instruction in the English language.

- Local Governing Board

(m) "Local governing board," for purposes of Section 3081, means either district or county board of education, depending on which agency, district, governing board, or county is alleged to be in violation of a law or regulation.

- Nonpublic Agency

(n) "Nonpublic agency" means any private, nonsectarian establishment or individual providing related services necessary for an individual with exceptional needs to benefit educationally from the pupil's educational program.

- Nonpublic School

(o) "Nonpublic school" means any private, nonsectarian school enrolling individuals with exceptional needs, and employing at least one full-time teacher holding an appropriate credential authorizing special education services, and certified by the State Department of Education. The nonpublic school shall meet those standards as prescribed in Section 3062 herein.

- Nonsectarian

(p) "Nonsectarian" status means a nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility.

- Prescribed Course of Study

(q) "Prescribed course of study," as used in Education Code Section 56026(c)(4), means the course of study that is established by the local board of education pursuant to Education Code Section 51000 et seq.

- Primary Language

(r) "Primary language" means the language other than English, or other mode of communication, the person first learned, or the language which is spoken in the person's home. In the case of a pupil identified as a pupil of limited English proficiency pursuant to Education Code Sections 52164 and 52164.1, limited English proficiency shall be defined pursuant to Education Code Section 52163(m).

(s) Program means:

- Program

"Program," when referring to an individual with exceptional needs, means the individualized education program.

"Program," when referring to an educational agency, means that system of procedures and resources established by a district, special education local plan area, or county office to provide special education.

- Qualified

(t) "Qualified" means that a person has met federal and state certification licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code. Nothing in this definition shall be construed as restricting the activities in the services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.

- Specialized Health Care Services

(u) "Specialized health care services" are those health services prescribed by the pupil's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the pupil to attend school.

- Temporary Physical Disability

(v) "Temporary physical disability" means a disability incurred while a pupil was a regular education pupil and which at the termination of the temporary physical disability, the pupil can, without special intervention, reasonably be expected to return to his or her regular education class.

[Authority cited: Section 56100(a), (i), and (j), Education Code] [Reference: Sections 49423.5, 56026, and 56320, Education Code; and 34 CFR 300.4 and 300.12]

## Article 2. Administration

- ADMINISTRATION
  - Other Public Agencies

3010. Educational programs and services administered by other public agencies which provide educational programs and services to individuals with exceptional needs shall adhere to the provisions of federal and state laws and regulations relating to individuals with exceptional needs.

[Authority cited: Education Code Section 56100(a) and (i); 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 56000, 56100(i), and 56500, Education Code; and 34 CFR 300.2, 300.11, 300.60]

## Article 3. Identification, Referral and Assessment

- IDENTIFICATION, REFERRAL AND ASSESSMENT
  - Referral

3021. (a) All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff of the school district, special education local plan area, or county office shall offer assistance to the individual in making a request in writing, and shall assist the individual if the individual requests such assistance.

(b) All school staff referrals shall be written and include:

(1) A brief reason for the referral.

(2) Documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. This documentation shall not delay the time lines for completing the assessment plan or assessment.

[Authority cited: Section 56100(a), (i), and (j), Education Code] [Reference: Sections 56300-56303, Education Code; 34 CFR 300.128, 300.220]

- Referral of Pupils Having a Diagnosed Chronic Illness

3021.1. (a) When a pupil has been medically diagnosed as having a chronic illness or acute health problem, the pupil may be referred to the school district or county office for an assessment to determine the need for special education.

(b) The following information shall be reviewed by the individualized education program team:

(1) The type of chronic illness;

(2) The possible medical side effects and complications of treatment that could affect school functioning;

(3) The educational and social implications of the disease and treatment to include but not limited to the likelihood of fatigue, absences, changes in physical appearance, amputations, or problems with fine and gross motor control, and

(4) Special considerations necessitated by outbreaks of infectious diseases, if applicable.

(c) The individualized education program team shall designate the school's liaison with the pupil's primary health provider.

[Authority cited: Section 56100(a), (i), and (j), Education Code] [Reference: Sections 56300-56303, Education Code; 34 CFR 300.128, 300.220]

- Assessment Plan

3022. In addition to the assessment plan requirements of Education Code Section 56321, the proposed written assessment plan shall include a description of any recent assessment conducted, including any available independent assessments and any assessment information the parent requests to be considered, and information indicating the pupil's primary language and the pupil's language proficiency in the primary language as determined by Education Code Section 52164.1.

[Authority cited: Section 56100(a), (i), (j), Education Code; and 20 USC 1414(c)(2)(B)] [Reference: Sections 56321, 56329, Education Code; and 34 CFR 300.500-502, and 300.515-541]

- Assessment
  - Administered by Qualified Personnel

3023. (a) In addition to provisions of Section 56320 of the Education Code, assessments shall be administered by qualified personnel who are competent in both the oral or sign language skills and written skills of the individual's primary language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the pupil. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall document this condition and note that the validity may have been affected.

  - Exceptions

(b) The normal process of second-language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a handicapping condition.

[Authority cited: Section 56100(a), (i), and (j), Education Code] [Reference: Sections 56001, 56320, 56324, and 56327, Education Code; and 34 CFR 300.530, 300.532 and 300.543]

- Transfer

3024. In addition to the requirements specified in Education Code Section 56325 and all applicable sections in this chapter, the following shall apply:

  - Records

(a) Transfer of Records. Upon receipt of a request from an educational agency where an individual with exceptional needs has enrolled, a former educational agency shall send the pupil's special education records, or a copy thereof, within five working days.

  - Transition from Elementary School District to High School District

(b) Transition from Elementary School District to High School District. When a pupil is to enroll in a high school district from an elementary district, the elementary district shall invite the high school district to the individualized education program team meeting prior to the last scheduled review. If the authorized high school personnel participate with the elementary district personnel in the individualized education program team meeting, the individualized education program shall specify the appropriate high school placement.

If the authorized representative of the high school district has not participated in the individualized education program development prior to transfer from the elementary program, the elementary school district shall notify the high school district of those individuals with exceptional needs who require special education and related services. For each pupil listed who enrolls in the high school district, the administrator shall make an interim placement in accordance with Education Code 56325 or shall immediately convene an individualized education program team meeting.

[Authority cited: Sections 49068 and 56100(a), Education Code] [Reference: Section 49068 and 56325, Education Code]

- Assessment Option: Referral to State School for Further Assessment
- Local Assessments

3025. (a) Prior to referring a pupil for further assessment to California Schools for the Deaf or Blind or the Diagnostic Schools, districts, special education local plan areas, counties, or other agencies providing education services, shall first conduct assessments at the local level within the capabilities of that agency. Results of local assessments shall be provided to parent(s) and shall state the reasons for referral to the State School. Results of local assessments shall accompany the referral request.

- Pursuant to EC 56320

(b) The Schools for the Deaf and Blind and the Diagnostic Schools shall conduct assessments pursuant to the provisions of Education Code Section 56320 et seq.

- Local Participation

(c) A representative of the district, special education local plan area, or county individualized education program team shall participate in the staffing meeting and shall receive the final report and recommendations. Conference calls are acceptable forms of participation, provided that written reports and recommendations have been received by the representative prior to the meeting.

[Authority cited: Section 56100(a), Education Code] [Reference: Section 56326, Education Code]

- Hearing and Vision Screening

3027. All pupils being assessed for initial and three-year review for special education services shall have had a hearing and vision screening, unless parental permission was denied.

[Authority cited: Section 56100(a), Education Code] [Reference: Sections 56320, 56321 and 56327, Education Code; and 34 CFR 300.532]

- Audiological Assessment

3028. All pupils continuing to fail a threshold hearing test shall be assessed by a licensed or credentialed audiologist and such assessment shall be a part of the assessment plan.

[Authority cited: Section 56100(a), Education Code] [Reference: Sections 56320 and 56327, Education Code; and 34 CFR 300.532]

- Contracting for Individually Administered Tests of Psychological Functioning Due to Unavailability of School Psychologists

3029. (a) School districts, county offices, and special education local plan areas shall ensure that credentialed school psychologists are available to perform individually administered tests of intellectual or emotional functioning pursuant to Section 56320(b)(3) of the Education Code.

(b) Due to the temporary unavailability of a credentialed school psychologist, a school district or county office may contract with qualified personnel to perform individually administered tests of intellectual or emotional functioning including necessary reports pursuant to Section 56327 of the Education Code.

(c) The district or county office shall seek appropriately credentialed school psychologists for employment. These efforts, which include but are not limited to contacting institutions of higher education having approved school psychology programs and utilizing established personnel recruitment practices, shall be documented and available for review.

(d) The only persons qualified to provide assessment services under this section shall be educational psychologists licensed by the Board of Behavioral Science Examiners.

[Authority cited: Sections 56100(a), 56320(f), Education Code] [Reference: Sections 56320(b)(3), and 56327, Education Code]

- INDIVIDUALS WITH EXCEPTIONAL NEEDS
  - Eligibility Criteria

## Article 3.1. Individuals with Exceptional Needs

3030. A pupil shall qualify as an individual with exceptional needs, pursuant to Section 56026 of the Education Code, if the results of the assessment as required by Section 56320 demonstrate that the degree of the pupil's impairment as described in Section 3030 (a through j) requires special education in one or more of the program options authorized by Section 56361 of the Education Code. The decision as to whether or not the assessment results demonstrate that the degree of the pupil's impairment requires special education shall be made by the individualized education program team, including assessment personnel in accordance with Section 56341(d) of the Education Code. The individualized education program team shall take into account all the relevant material which is available on the pupil. No single score or product of scores shall be used as the sole criterion for the decision of the individualized education program team as to the pupil's eligibility for special education. The specific processes and procedures for implementation of these criteria shall be developed by each special education local plan area and be included in the local plan pursuant to Section 56220(a) of the Education Code.

- Hearing Impairment

(a) A pupil has a hearing impairment, whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.

- Hearing and Visual Impairment

(b) A pupil has concomitant hearing and visual impairments, the combination of which causes severe communication, developmental, and educational problems.

- Language or Speech Disorder

(c) A pupil has a language or speech disorder as defined in Section 56333 of the Education Code, and it is determined that the pupil's disorder meets one or more of the following criteria:

(1) Articulation disorder.

(A) The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.

(B) A pupil does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

(2) Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

(3) Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.

(4) Language Disorder. The pupil has an

expressive or receptive language disorder when he or she meets one of the following criteria:

(A) The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or

(B) The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subsection (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech, and hearing specialist shall document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

- Visual Impairment

(d) A pupil has a visual impairment which, even with correction, adversely affects a pupil's educational performance.

- Severe Orthopedic Impairment

(e) A pupil has a severe orthopedic impairment which adversely affects the pupil's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

- Other Health Impairments

(f) A pupil has limited strength, vitality or alertness, due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, tuberculosis and other communicable infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia which adversely affects a pupil's educational performance. In accordance with Section 56026(e) of the Education Code, such physical disabilities shall not be temporary in nature as defined by Section 3001(v).

- Autistic-Like Behaviors

(g) A pupil exhibits any combination of the following autistic-like behaviors, to include but not limited to:

(1) An inability to use oral language for appropriate communication.

(2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.

(3) An obsession to maintain sameness.

(4) Extreme preoccupation with objects or inappropriate use of objects or both.

(5) Extreme resistance to controls.

(6) Displays peculiar motoric mannerisms and motility patterns.

(7) Self-stimulating, ritualistic behavior.

- Mental Retardation

(h) A pupil has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a pupil's educational performance.

- Serious Emotional Disturbance

(i) Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

(1) An inability to learn which cannot be explained by intellectual, sensory, or health factors.

(2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations.

(4) A general pervasive mood of unhappiness or depression.

(5) A tendency to develop physical symptoms or fears associated with personal or school problems.

- Specific Learning Disabilities

(j) A pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education

Code. For the purpose of Section 3030(j):

(1) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression.

(2) Intellectual ability includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning.

(3) The level of achievement includes the pupil's level of competence in materials and subject matter explicitly taught in school and shall be measured by standardized achievement tests.

(4) The decision as to whether or not a severe discrepancy exists shall be made by the individualized education program team, including assessment personnel in accordance with Section 56341(d), which takes into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the individualized education program team shall use the following procedures:

(A) When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.

(B) When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.

(C) If the standardized tests do not reveal a severe discrepancy as defined in subparagraphs (A) or (B) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

1. Data obtained from standardized assessment instruments;
2. Information provided by the parent;
3. Information provided by the pupil's present teacher;
4. Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
5. Consideration of the pupil's age, particularly for young children; and
6. Any additional relevant information.

(5) The discrepancy shall not be primarily the result of limited school experience or poor school attendance.

[Authority cited: Statutes of 1981, Chapter 1094, Section 25(a); and Section 56100(a), (g), (i), Education Code] [Reference: 20 USC 1401(a)(15) and 1412(5); 34 CFR 300.5(b)(7) and (9), 300.532(a)(2), (d) and (e), 300.533, 300.540, 300.541-43; and Sections 56026, 56320, 56333, and 56337, Education Code]

- Additional Eligibility* Criteria for Individuals with Exceptional Needs - Age Birth to Four Years and Nine Months

3031. (a) A child, age birth to four years and nine months, shall qualify as an individual with exceptional needs pursuant to Education Code Section 56026(c)(1) and (2) if the Individualized Education Program Team determines that the child meets the following criteria:

(1) Is identified as an individual with exceptional needs pursuant to Section 3030, and

(2) Is identified as requiring intensive special education and services by meeting one of the following:

(A) The child is functioning at or below 50% of his or her chronological age level in any one of the following skill areas:

1. gross or fine motor development;
2. receptive or expressive language development;

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*See Chapter 4.45 of Part 30 of the Education Code

3. social or emotional development;
4. cognitive development; and
5. visual development.

(B) The child is functioning between 51% and 75% of his or her chronological age level in any two of the skill areas identified in Section 3031(2)(A).

(C) The child has a disabling medical condition or congenital syndrome which the Individualized Education Program Team determines has a high predictability of requiring intensive special education and services.

(b) Programs for individuals with exceptional needs younger than three years of age are permissive in accordance with Section 56001(c) of the Education Code except for those programs mandated pursuant to Section 56425 of the Education Code.

[Authority cited: Statutes of 1981, Chapter 1094, Section 25(a); and Section 56100(a), (g), (i), Education Code] [Reference: 20 USC 1401(a)(15); 34 CFR 300.5; Statutes of 1981, Chapter 1094, Section 25 (a); and Sections 56026, 56030.5, 56333 and 56337, Education Code]

## Article 4. Instructional Planning and Individualized Education Program

- INSTRUCTIONAL PLANNING AND IEP

- Individualized Education Program Implementation

3040. (a) Upon completion of the individualized education program, that individualized education program shall be implemented as soon as possible following the individualized education program team meeting.

(b) A copy of the individualized education program shall be provided to the parents at no cost, and a copy of the individualized education program shall be provided in the primary language at the request of the parent.

(c) The individualized education program shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided.

[Authority cited: Section 56100(a), (i), and (j), Education Code] [Reference: Section 56341, Education Code; 34 CFR 300.342-300.345]

- Placement

3042. (a) Specific educational placement means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the individualized education program, in any one or a combination of public, private, home and hospital, or residential settings.

(b) The individualized education program team shall document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not handicapped. The documentation shall indicate why the pupil's handicap prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services.

[Authority cited: Section 56100(a), Education Code]
[Reference: Sections 56001(g), 56031, 56341 and 56343, Education Code]

- Extended School Year Services

3043. Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f).

- Provided During Regular Academic Year

(a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

- Individuals Who May Require Extended Year

(b) Individuals with exceptional needs who may require an extended school year are those who:

(1) Are placed in special classes or centers; or

(2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team.

- Definition of Extended Year

(c) The term "extended year" as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term "academic year" as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

- Minimum Instructional Days

(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes:

(1) A maximum of 55 instructional days excluding holidays, shall be allowed for individuals in special classes or centers for the severely handicapped; and

(2) A maximum of 30 instructional days excluding holidays, shall be allowed for all other eligible pupils needing extended year.

- Increase in Instructional Days

(e) A local governing board may increase the number of instructional days during the extended year period, but shall not claim revenue for average daily attendance generated beyond the maximum instructional days allowed in subsection (d)(1) and (2).

- Included in IEP

(f) An extended year program, when needed, as determined by the individualized education program team, shall be included in the pupil's individualized education program.

- Conditions to Qualify for ADA

(g) In order to qualify for average daily attendance revenue for extended year pupils, all of the following conditions must be met:

(1) Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the individualized education program to meet a pupil's unique needs.

(2) The special education and related services offered during the extended year period are comparable in standards, scope and quality to the special education program offered during the regular academic year.

- Integration in the Regular Education Program

(h) If during the regular academic year an individual's individualized education program specifies integration in the regular classroom, a public education agency is not required to meet that component of the individualized education program if no regular summer school programs are being offered by that agency.

- Continuous School Program

(i) This section shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.

[Authority cited: Section 56100(a) and (j), Education Code] [Reference: Sections 37600, 41976.5 and 56345, Education Code; and 34 CFR 300.346]

- IMPLEMENTATION
  (PROGRAM COMPONENTS)

Article 5. Implementation (Program Components)

- Standards for Designated Instruction and Services (DIS)

3051. (a) General Provisions.

(1) Designated instruction and services may be provided to individuals or to small groups in a specialized area of educational need, and throughout the full continuum of educational settings.

(2) Designated Instruction and Services, when needed as determined by the individualized education program team, shall be specified in the individualized education program, including frequency and duration of services.

(3) All entities and individuals providing designated instruction and services shall be qualified.

(4) All entities and individuals providing designated instruction and services shall be:

(A) Employees of the school district or county office, or

(B) Employed under contract pursuant to Section 56365 of the Education Code. Such persons shall be certified by the Department pursuant to Section 3064 of this Title, or

(C) Employees, vendors or contractors of the State Departments of Health Services or Mental Health, or any designated local public health or mental health agency.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56363, Education Code; and 34 CFR 300.12]

- Language, Speech and Hearing Development and Remediation
  - Appropriate Credential

3051.1. (a) An individual holding an appropriate credential with specialization in language, speech and hearing may provide services which include:

(1) Referral and assessment of individuals suspected of having a disorder of language, speech, or hearing. Such individuals are not considered as part of the caseload pursuant to Section 56363.3 of the Education Code unless an individualized education program is developed and services are provided pursuant to Section 3051.1(a)(2) and (3).

(2) Specialized instruction and services for individuals with disorders of language, speech, and hearing, including monitoring of pupil progress on a regular basis, providing information for the review, and when necessary participating in the review and revision of individualized educational programs of pupils.

(3) Consultative services to pupils, parents, teachers, or other school personnel.

(4) Coordination of speech and language services with an individual's regular and special education program.

- Caseloads

(b) Caseloads of full-time equivalent language, speech, and hearing specialists providing instruction and services within the district, special education local plan area, or county office shall not exceed a district-wide, special education local plan area-wide, or county-wide average of fifty-five (55) individuals unless prior written approval has been granted by the State Superintendent of Public Instruction.

- Services by an Aide

(c) Services may be provided by an aide working under the direct supervision of a credentialed language, speech, and hearing specialist if specified in the individualized education program. No more than two aides may be supervised by one credentialed language, speech, and hearing specialist. The case loads of persons in subsection (b) shall not be increased by the use of noncertificated personnel.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56363(b)(1), 56363.3, Education Code; and 34 CFR 300.13(b)(12)]

- Audiological Services

3051.2. (a) In addition to provisions of Title 34, Code of Federal Regulations, Section 300.13(b)(1), designated audiological instruction and services may include:

(1) Aural rehabilitation (auditory training, speech reading, language habilitation, and speech conservation) and habilitation with individual pupils or groups and support for the hearing-impaired pupils in the regular classroom.

(2) Monitoring hearing levels, auditory behavior, and amplification for all pupils requiring personal or group amplification in the instructional setting.

(3) Planning, organizing, and implementing an audiology program for individuals with auditory dysfunctions, as specified in the individualized education program.

(4) Consultative services regarding test findings, amplification needs and equipment, otological referrals, home training programs, acoustic treatment of rooms, and coordination of educational services to hearing-impaired individuals.

- Valid Credential

(b) The person providing audiological services shall hold a valid credential with a specialization in clinical or rehabilitative services in audiology.

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Section 56363(b)(2), Education Code; and 34 CFR 300.13(b)(1)]

3051.3. (a) Mobility instruction may include: — Mobility Instruction

(1) Specialized instruction for individuals in orientation and mobility techniques.

(2) Consultative services to other educators and parents regarding instructional planning and implementation of the individualized education program relative to the development of orientation and mobility skills and independent living skills.

(b) The person providing mobility instruction and services shall hold a credential as an orientation and mobility specialist. — Credential Requirement

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Section 56363, Education Code]

3051.4. (a) Special education and related services provided in the home or hospital for school age pupils is limited to those pupils who have been identified as individuals with exceptional needs in accordance with Section 3030 and for whom the individualized education program team recommends such instruction or services. — Instruction in the Home or Hospital

(b) Instruction may be delivered individually, in small groups or by teleclass. — Instruction Options

(c) For those individuals with exceptional needs with a medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness, the individualized education program team shall review, and revise, if appropriate, the individualized education program whenever there is a significant change in the pupil's current medical condition. — Change in Medical Condition

(d) When recommending placement for home instruction, the individualized education program team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. The report shall include a projected calendar date for the pupil's return to school. The individualized education program team shall meet to reconsider the individualized education program prior to the projected calendar date for the pupil's return to school. — Medical Report

(e) Instruction in the home or hospital shall be provided by a regular class teacher, the special class teacher or the resource specialist teacher, if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction.

- Provision of Instruction

(f) The teacher providing the home instruction shall contact the pupil's previous school and teacher to determine:

- Contact Previous School

(1) The course work to be covered;
(2) The books and materials to be used;
(3) Who is responsible for issuing grades and promoting the pupil when appropriate;
(4) For pupils in grades 7 to 12, the teacher shall confer with the school guidance counselor to determine:
(A) The hours the pupil has earned toward semester course credit in each subject included in the individualized education program and the grade as of the last day of attendance;
(B) Who is responsible for issuing credits when the course work is completed;
(C) Who will issue the diploma if the pupil is to graduate.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56001, 56363(b)(4), Education Code]

3051.5. (a) Adapted physical education is for individuals with exceptional needs who require developmental or corrective instruction and who are precluded from participation in the activities of the general physical education program, modified general physical education program, or in a specially designed physical education program in a special class. Consultative services may be provided to pupils, parents, teachers, or other school personnel for the purpose of identifying supplementary aids and services or modifications necessary for successful participation in the regular physical education program or specially designed physical education programs.

- Adapted Physical Education for Individuals with Exceptional Needs

(b) The person providing instruction and services shall have a credential authorizing the teaching of adapted physical education as established by the Commission on Teacher Credentialing.

- Credential Requirement

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: 34 CFR 300.307]

3051.6. (a) When the district, special education local plan area, or county office contracts for the services of a physical therapist or an occupational therapist, the following standards shall apply:

- Physical and Occupational Therapy

(1) Occupational or physical therapists shall provide services based upon recommendation of the individual education program team. Physical therapy and occupational therapy services for infants are limited by Education Code 56426.6. Physical therapy services may not exceed the services specified in the Business and Professions Code at Section 2620.

(2) The district, special education services region, or county office shall assure that the therapist has available safe and appropriate equipment.

(b) Qualifications of therapists:

- Qualifications of Therapists

(1) The therapists shall have graduated from an accredited school.

(2) A physical therapist shall be currently licensed by the Board of Medical Quality Assurance of the State of California and meet the educational standards of the Physical Therapy Examining Committee.

(3) An occupational therapist shall be currently registered with the American Occupational Therapy Association.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56363(b)(6), Education Code; and 34 CFR 300.13(b)(5) and (7), 300.600]

3051.7. (a) Vision services shall be provided by a credentialed teacher of the visually handicapped and may include:

- Vision Services

(1) Adaptations in curriculum, media, and the environment, as well as instruction in special skills.

(2) Consultative services to pupils, parents, teachers, and other school personnel.

(b) An assessment of and provision for services to visually impaired pupils may be conducted by an eye specialist who has training and expertise in low vision disabilities and has available the appropriate low vision aids for the purposes of assessment. The eye specialist may provide consultation to the pupil, parents, teacher and other school personnel as may be requested by the individualized education program team.

- Assessment of and Provision for Services

(c) Procedures which may be utilized by qualified personnel are those procedures authorized by federal and state laws and regulations and

- Procedures Utilized by Qualified Personnel performed in accordance with these laws and regulations and standards of the profession.

- Eye Specialist

(d) For the purposes of this section, an eye specialist shall mean a licensed optometrist, ophthalmologist, or other licensed physician and surgeon who has training and expertise in low vision disabilities.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Sections 44265.5 and 56363(b)(7), Education Code]

- Vision Therapy

3051.75. (a) Vision therapy may include: Remedial and/or developmental instruction provided directly by or in consultation with the optometrist, ophthalmologist, or other qualified licensed physician and surgeon providing ongoing care to the individual.

- Providers of Vision Therapy

(b) Vision therapy shall be provided by an optometrist, ophthalmologist, or by appropriate qualified school personnel when prescribed by a licensed optometrist, ophthalmologist, or other qualified licensed physician and surgeon.

- Procedures Utilized by Qualified Personnel

(c) Procedures which may be utilized by qualified personnel are those procedures authorized by federal and state laws and regulations and performed in accordance with these laws and regulations and standards of the profession.

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414 (c) (2) (B); and 34 CFR 300.600] [Reference: Section 56363(b)(7), Education Code]

- Specialized Driver Training Instruction

3051.8. (a) Specialized driver training instruction may include instruction to an individual with exceptional needs to supplement the regular driver training program. The individualized education program shall determine the need for supplementary specialized driver training team instruction. The need to supplement the regular program shall be based on an assessment of the pupil's health, physical, and/or educational needs which require modifications which cannot be met through a regular driver training program.

- Provided by Qualified Teachers

(b) Driver training for individuals herein described must be provided by qualified teachers, as defined by Education Code Sections 41906 and 41907.

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 41305-41306;, 41906-41907 and 56363(b)(8), Education Code]

3051.9. (a) Counseling and guidance services may be provided to an individual with exceptional needs who requires additional counseling and guidance services to supplement the regular guidance and counseling program. The individualized education program team shall determine the need for additional guidance and counseling services.

- Counseling and Guidance Services

(b) Counseling and guidance services necessary to implement the individualized education program may include:

- Types of Services

(1) Educational counseling in which the pupil is assisted in planning and implementing his or her immediate and long-range educational program.

(2) Career counseling in which the pupil is assisted in assessing his or her aptitudes, abilities, and interests in order to make realistic career decisions.

(3) Personal counseling in which the pupil is helped to develop his or her ability to function with social and personal responsibility.

(4) Counseling and consultation with parents and staff members on learning problems and guidance programs for pupils.

(c) The individual performing counseling services to pupils shall be qualified.

- Qualified Individual

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 35300 and 56363(b)(11), Education Code, and 34 CFR 300.13(b)(2), (b)(6), and (b)(8)]

3051.10. Psychological services may include:

- Psychological Services Other Than Assessment and Development of the Individualized Education Program

(a) Counseling provided to an individual with exceptional needs by a credentialed or licensed psychologist or other qualified personnel.

(b) Consultative services to parents, pupils, teachers, and other school personnel.

(c) Planning and implementing a program of psychological counseling for individuals with exceptional needs and parents.

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Section 56363(b)(10), Education Code; and 34 CFR 300.13(b)(8)]

3051.11. Parent counseling and training may include:

- Parent Counseling and Training

(a) Assisting parents in understanding the special needs of their child, and

(b) Providing parents with information about child development.

[Authority cited: Education Code Section 56100(a) and (i); 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Section 56363(b)(11), Education Code; and 34 CFR 300.13(b)(6)]

- Health and Nursing Services

3051.12. (a) Health and nursing services may include:

(1) Providing services by qualified personnel.

(2) Managing the individual's health problems on the school site.

(3) Consulting with pupils, parents, teachers, and other personnel.

(4) Group and individual counseling with parents and pupils regarding health problems.

(5) Maintaining communication with health agencies providing care to individuals.

- Provided as Described in EC Section 49423.5

(b) Specialized physical health care may be provided as described in Education Code Section 49423.5.

- Definitions

(1) Definitions.

- Specialized Physical Health Care Services

(A) Specialized physical health care services means those health services prescribed by the child's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the child to attend school.

- Standardized Procedures

(B) Standardized procedures means protocols and procedures developed through collaboration among school or hospital administrators and health professionals, including licensed physicians and surgeons and nurses, to be utilized in the provision of the specialized physical health care services.

- Qualified

(C) Qualified means ability to demonstrate competence in Cardio-Pulmonary Resuscitation, current knowledge of community emergency medical resources, and skill in the use of equipment and performance of techniques necessary to provide specialized physical health care services for individuals with exceptional needs. In addition:

1. "Qualified" for the professional school or public health nurse or licensed physician and surgeon shall mean trained in the procedures to a level of competence and safety which meets the objectives of the training.

2. "Qualified" for the designated school personnel shall mean trained in the procedures to a level of competence and safety which meets the objectives of the training as provided by the school nurse, public health nurse, licensed physician and surgeon, or other programs which provide the training.

- Supervision

(D) Supervision means review, observation, and/or instruction of a designated school person's performance and of physical health care services, but does not necessarily require the immediate presence of the supervisor at all times.

1. Immediate supervision means that the supervisor shall be physically present while a procedure is being administered.

2. Direct supervision means that the supervisor shall be present in the same building as the person being supervised and available for consultation and/or assistance.

3. Indirect supervision means that the supervisor shall be available to the qualified designated school person either in person or through electronic means to provide necessary instruction, consultation, and referral to appropriate care and services as needed. Supervision of designated school persons shall include review on-site by a qualified school nurse, qualified public health nurse, or qualified licensed physician and surgeon. Supervision shall also include review of the competence of that individual in performing the specialized health care service, maintenance of appropriate records, physical environment, and equipment.

- Training

(E) Training means preparation in the appropriate delivery and skillful performance of specialized physical health care services. In addition:

1. Medically related training of credentialed school nurses or public health nurses shall be that training in an approved program which may be necessary to update or make current the nurse's professional skills and knowledge related to meeting pupils' needs for specialized physical health care services.

2. Medically related training of employed designated school personnel is that training in an approved program in standardized procedures provided by a qualified school nurse, qualified public health nurse, qualified licensed physician and surgeon, or other approved programs to enable the person to provide the specialized physical health care services necessary to enable the child to attend school.

- CPR Competence

(F) Competence in Cardio-Pulmonary Resuscitation means possession of a current valid certificate from an approved program.

(2) Standards and Staffing.

- Standards and Staffing
- Allocation of Personnel

(A) Allocation of qualified designated school personnel shall be determined by the amount and type of supervision necessary to this regulation, and also the type and frequency of services needed by students in special classes and centers, and regular instructional settings.

- Approved Training

(B) Approved training for qualified personnel shall be provided in one or more of the following ways:

1. By a qualified school nurse, qualified public health nurse, or qualified licensed physician and surgeon, as defined in these regulations.
2. By career and continuing education programs, approved by the appropriate licensing board.
3. By training programs through public or private medical institutions, i.e., hospitals, public health agencies, Visiting Nurses Associations, and Red Cross.

- Organization and Administration

(3) Organization and Administration.

- Continuing Services

(A) Specific continuing specialized physical health care services required in order for the individual to benefit from special education will be included in the individualized education program. If the parent elects to perform the service during the school day, a waiver shall be signed relieving the school of the responsibility.

- Appropriate Accommodations

(B) Appropriate accommodations for safety and necessary physical care services for the individual with exceptional needs in the school setting shall be provided by the school. Personal privacy and dignity of an individual with exceptional needs shall be assured.

- Medical Equipment

(C) The school district shall not be required to purchase medical equipment for an individual pupil. However, the school district, special education local plan area, or county office is responsible for providing other specialized equipment for use at school that is needed to implement the individualized education program.

- Duties of Medical Professional

(D) In accordance with Education Code Section 49423.5(a)(2), a qualified school nurse, qualified public health nurse, or qualified licensed physician and surgeon responsible for supervising the physical health care of an individual with exceptional needs in the school setting shall:

1. Coordinate the health care services to the individuals with exceptional needs on the school site.
2. Consult with appropriate personnel regarding management of health care services for individuals with exceptional needs.
3. Make appropriate referrals and maintain communication with health agencies providing care to individuals with exceptional needs.
4. Maintain or review licensed physician and surgeon and parent requests and daily documentation records.

- Written Procedures and Documentation

(E) Written licensed physician and surgeon and parent requests, as well as the specific standardized procedures to be used if physical health care services are provided, shall be maintained for each individual with exceptional needs. Daily documentation of specific services which are provided shall be maintained on a district-approved form which shall include the signatures of the qualified designated school person(s) who performs the procedure.

1. Any pupil who is required to have specialized physical health care services during the school day, prescribed for him or her by a licensed physician and surgeon, may be assisted by a qualified school nurse, qualified public health nurse, or other qualified school personnel, if the school district receives:

a. A written statement from the licensed physician and surgeon stating the procedure and time schedules by which such procedures are to be given; and

b. A written statement from the parent or guardian of the pupil, indicating the desire that the school district assist the pupil in the matters set forth in the licensed physician and surgeon's statement, and granting consent for the delivery of such services.

2. This written statement of a licensed physician and surgeon and parent requests and daily documentation shall be maintained in accordance with the requirements of confidentiality of pupil records, and are considered mandatory interim pupil records.

[Authority cited: Sections 49423.5(c) and 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 49423.5 and 56363(b)(12), Education Code; and 34 CFR 300.13(b)(10)]

- Social Worker Services

3051.13. (a) Personnel providing social worker services shall be qualified.

(b) Social work services may include:

(1) Individual and group counseling with the individual and his or her immediate family.

(2) Consultation with pupils, parents, teachers, and other personnel regarding the effects of family and other social factors on the learning and developmental requirements of individual pupils with exceptional needs.

(3) Developing a network of community resources, making appropriate referral and maintaining liaison relationships among the school, the pupil with exceptional needs, the family, and the various agencies providing social, income maintenance,

employment development, mental health, or other developmental services.

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [References: Section 56363(b)(13), Education Code; and 34 CFR 300.13(b)(11)]

- Specially Designed Vocational Education and Career Development

3051.14. Specially designed vocational education and career development for individuals with exceptional needs regardless of severity of disability may include:

(a) Providing prevocational programs and assessing work-related skills, interests, aptitudes, and attitudes.

(b) Coordinating and modifying the regular vocational education program.

(c) Assisting individuals in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or sheltered environment, and to enable such individuals to become participating members of the community.

(d) Establishing work training programs within the school and community.

(e) Assisting in job placement.

(f) Instructing job trainers and employers as to the unique needs of the individuals.

(g) Maintaining regularly scheduled contact with all work stations and job-site trainers.

(h) Coordinating services with the Department of Rehabilitation, the Department of Employment Development and other agencies as designated in the individualized education program.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56363(b)(14), Education Code; 34 CFR 300.14 (b)(3)]

- Recreation Services

3051.15. Recreation services include but are not limited to:

(a) Therapeutic recreation services which are those specialized instructional programs designed to assist pupils in becoming as independent as possible in leisure activities, and when possible and appropriate, facilitate the pupil's integration into regular recreation programs.

(b) Recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills; and, the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities.

(c) Leisure education programs which are those specific programs designed to prepare the pupil for optimum independent participation in appropriate leisure activities, including teaching social skills necessary to engage in leisure activities, and developing awareness of personal and community leisure resources.

[Authority cited: Section 56100(a) and (l), Education Code] [Reference: Section 56363(b)(15), Education Code; 34 CFR 300.13 (b)(9)]

- Specialized Services for Low-Incidence Disabilities

3051.16. Specialized Services for low-incidence disabilities may include:

(a) Specially designed instruction related to the unique needs of pupils with low-incidence disabilities provided by teachers credentialed pursuant to Education Code 44265;

(b) Specialized services related to the unique needs of pupils with low-incidence disabilities provided by qualified individuals such as interpreters, notetakers, readers, transcribers, and other individuals who provide specialized materials and equipment.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56363(b)(16), Education Code]

- Services for Pupils with Chronic Illnesses or Acute Health Problems

3051.17. (a) Specialized services may be provided to pupils determined eligible pursuant to Section 3030(f). Such services include but are not limited to:

(1) Individual consultation;

(2) Home or hospital instruction; and

(3) Other instructional methods using advanced communication technology.

- Monitoring Educational Progress

(b) For pupils whose medical condition is in remission or in a passive state, the individualized education program team shall specify the frequency for monitoring the pupil's educational progress to assure that the illness does not interfere with the pupil's educational progress.

- Acute Health Problem

(c) When a pupil identified pursuant to Section 3030(f) experiences an acute health problem which results in his or her non-attendance at school for more than five consecutive days, upon notification of the classroom teacher or the parent, the school principal or designee shall assure that an individualized education program team is convened to determine the appropriate educational services.

- Alternative Means to Demonstrate Competencies

(d) If there is a pattern of sporadic illnesses, the individualized education program team shall convene to consider alternative means for the pupil to demonstrate competencies in the required course of study so that the cumulative number of absences do not prevent educational progress.

[Authority cited: Section 56100(a), (i), Education Code] [Reference: Section 56363(a), Education Code; 34 CFR 300.14(a) (1)]

- Designated Instruction and Services for the Deaf and Hard of Hearing

3051.18. (a) Instruction and services for deaf and hard of hearing pupils shall be provided by an individual holding an appropriate credential, who has competencies to provide services to the hearing impaired and who has training, experience and proficient communication skills for educating pupils with hearing impairments. Such services may include but need not be limited to:

(1) Speech, speech reading and auditory training.

(2) Instruction in oral, sign, and written language development.

(3) Rehabilitative and educational services for hearing impaired individuals to include monitoring amplification, coordinating information for the annual review, and recommending additional services.

(4) Adapting curricula, methods, media, and the environment to facilitate the learning process.

(5) Consultation to pupils, parents, teachers, and other school personnel as necessary to maximize the pupil's experiences in the regular education program.

(b) A specially trained instructional aide, working with and under the direct supervision of the credentialed teacher of the deaf and hard-of-hearing, may assist in the implementation of the pupil's educational program.

[Authority cited: Section 56100(a) and (i), Education Code] [Reference: Section 56363(b)(16), Education Code; and 34 CFR 300.13(a)]

- Special Classes

3053. (a) Placement in a special day class shall not limit or restrict the consideration of other options, including services provided in a vocational education program or any combination of programs and placements as may be required to provide the services specified in a pupil's individualized education program.

- Standards

(b) The following standards for special classes shall be met:

(1) A special class shall be composed of individuals whose needs as specified in the individualized education programs can be appropriately met within the class.

(2) Pupils in a special class shall be provided with an educational program in accordance with

their individualized education programs for at least the same length of time as the regular school day for that chronological peer group:

(A) When an individual can benefit by attending a regular program for part of the day, the amount of time shall be written in the individualized education program.

(B) When the individualized education program team determines that an individual cannot function for the period of time of a regular school day, and when it is so specified in the individualized education program, an individual may be permitted to attend a special class for less time than the regular school day for that chronological peer group.

(3) The procedure for allocation of aides for special classes shall be specified in the local plan. Additional aide time may be provided when the severity of the handicapping conditions of the pupils or the age of the pupils justifies it, based on the individualized education programs.

(4) Special class(es) shall be located to promote maximum appropriate interaction with regular educational programs.

(c) The special class shall be taught by a full-time-equivalent teacher whose responsibility is the instruction, supervision, and coordination of the educational program for those individuals enrolled in the special class.

- Special Class Teacher

The special class shall be taught by a teacher who holds an appropriate special education credential authorized by the Commission on Teacher Credentialing and who possesses the necessary competencies to teach individuals assigned to the class. Special class teachers with a Special Education Credential employed as of September 1, 1975, as teachers in special classes for pupils in severe language disorder aphasia programs and who possess the necessary competencies to teach individuals assigned to the class, shall be authorized to continue to teach.

[Authority cited: Section 56100(a), (i), Education Code] [Reference: Sections 56001 and 56364, Education Code; and 34 CFR 300.550-554]

3054. (a) Standards. Special centers operating under this section shall:

- Special Centers

(1) Provide pupils in a special center with an educational program in accordance with their individualized education programs for at least the same length of time as the regular school day for that chronological peer group:

(A) When an individual can benefit by attending a regular class(es) or other program part of the day, the amount of time shall be written in the individualized education program.

(B) When the individualized education program team determines that an individual cannot function for the period of time of a regular school day, and when it is so specified in the individualized education program, an individual may be permitted to attend a special center for less time than the regular school day for that chronological peer group.

(2) Be staffed by qualified personnel at a pupil/adult ratio to enable implementation of the pupils' individualized education programs.

(3) Provide an emergency communication system for the health and safety of individuals with exceptional needs, such as fire, earthquake, and smog alerts.

(4) Have specialized equipment and facilities to meet the needs of individuals served in the special centers.

- Interaction with Regular Educational Programs

(b) Special centers should be located to promote maximum, appropriate interaction with regular educational programs.

[Authority cited: Section 56100(a) and (i), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [References: Sections 56001 and 56364, Education Code; and 34 CFR 300.550-554]

## Article 6. Nonpublic, Nonsectarian School and Agency Services

- NONPUBLIC, NONSECTARIAN SCHOOL AND AGENCY SERVICES

- Eligibility Requirements for Nonpublic School or Agency Placement

3061. (a) The public education agency shall seek an appropriate special education or related service placement in a program operated by another public education agency prior to nonpublic school or agency placement. In no instance shall the public education agency recommend placement in another public program unless the other public education agency has had an opportunity to determine if the individualized education program can be implemented in the proposed public school program.

- Parental Consent

(b) Parental consent to the assessment plan shall include an agreement to make the pupil available to the public education agency as is necessary to determine whether the pupil may need special education and related services.

- Services Specified in IEP

(c) The special education and related services contracted for shall include those services specified in the individualized education program pursuant to Education Code Section 56366(a)(4). The contract shall include the service agreement. The individualized education program shall be transmitted to the nonpublic school or nonpublic agency.

(d) A public education agency may contract with a nonpublic day school located out-of-state if the individual returns to a California domicile each night only if no other California nonpublic day school which can provide an appropriate program is located within a reasonable distance.

- Day School Out-of-State

[Authority cited: Section 56100(a), (i) and (j), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Section 56345 and 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403]

- Standards for Nonpublic Schools
  - School Day

3062. (a) School Day.

(1) The nonpublic school shall be open to provide instruction at least 240 minutes per day five days per week.

(2) An individual with exceptional needs shall attend the nonpublic school for the length of a school day as specified in the individualized education program or the contract pursuant to Section 56366 of the Education Code.

- School Year

(b) School Year.

(1) The nonpublic school shall be open for instruction a minimum of 175 days.

(2) An individual with exceptional needs shall attend the nonpublic school for the length of the school year as specified in the individualized education program.

(3) "School year" means that period of time between September 1 and August 31 of the following calendar year.

- Restriction Disclaimer

(c) Nothing in this section shall be construed as restricting the activities of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.

- Credential Requirements

(d) Credential Requirements. When the individual with exceptional needs is receiving special education, the teacher shall hold a valid California credential appropriate to provide that service and issued by the Commission on Teacher Credentialing. When the individual with exceptional needs is receiving related services, the provider of related services shall hold a valid California credential or license.

- Qualified Personnel

(e) Nonpublic schools shall use the services of qualified personnel. When a substitute teacher is required, the provisions of Section 56061 of the Education Code shall apply. Pursuant to Section

56061(b), the nonpublic school may apply directly to the State Superintendent of Public Instruction for an extension of substitute days beyond twenty (20) school days. The nonpublic school shall submit a copy of the approved or denied waiver form to the contracting public education agencies.

- Copies of Valid Credentials and Licenses

(f) Nonpublic schools shall provide contracting public education agencies with copies of current valid California credentials and licenses for service providers of funded pupils and shall immediately notify the contracting public education agencies of any credentialed or licensed personnel changes. Failure to provide properly qualified personnel to provide services as specified in the individual education program shall be cause for contract termination.

- Attendance

(g) Attendance.

(1) The nonpublic school shall not claim attendance for funding purposes when the individual is suspended, expelled or otherwise not in attendance without an excused absence as defined in Section 46010 of the Education Code.

(2) If a pupil is to be considered for suspension, expulsion, or dismissal, the nonpublic school shall immediately notify the contracting public education agency to verify appropriate procedures. The procedures shall be specified in the contract and must be consistent with applicable laws, regulations, and policies.

(3) (A) When an excused or unexcused absence exceeds ten (10) consecutive school days or twenty (20) cumulative school days in a semester, the nonpublic school shall immediately notify the contracting public education agency. Failure to notify the contracting public education agency shall be cause for contract termination.

(B) A representative of the nonpublic school shall confer with a representative of the public school for purpose of reviewing the reasons for the absence. As a result of this conference, either party may request a review of the individualized education program.

[Authority cited: Section 56100(a), (i) and (j), Education Code] [Reference: Sections 56345 and 56365, 56366, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343, 300.344, 300.347, 300.348 and 300.400-403]

3063. - Standards for Nonpublic Agencies

- Standards for Nonpublic Agencies

(Reserved)

- Certification Requirements for Nonpublic Schools and Nonpublic Agencies

3064. (a) Required Certification. If a nonpublic school or nonpublic agency operates a facility/program on more than one site, each site must be certified. A nonpublic school or nonpublic agency may not claim reimbursement for attendance pursuant to Section 3066(f) unless the site where the individual is in attendance has been certified. Certification may be retroactive, provided the school met all the requirements of this article on the date the retroactive certification is effective. Nonpublic schools or nonpublic agencies operating programs outside of California shall be certified or licensed by that state to provide services for pupils under Public Law 94-142 in addition to meeting application requirements for the State of California.

When the nonpublic school or agency is part of a larger program or facility on the same site, the effect of the total program on the nonpublic school seeking certification shall be considered.

A copy of the standards for the organization shall be available to the Superintendent.

- Application

(b) Application for Certification. Any applicant desiring to obtain certification shall file with the Superintendent an application on forms provided by the Department.

- Affidavits

(c) Required Affidavits. The nonpublic school or nonpublic agency shall file the following affidavits, clearances, and assurances to verify compliance with:

(1) Civil Rights Act of 1964, Title VI (45 USC 2000(d)).

(2) Public Law 94-142 (20 USC 1401 et seq.).

(3) Section 504, Public Law 94-112 (29 USC 794).

(4) Education Code Section 33190 (Private School Affidavit).

(5) Nonsectarian Status.

(6) All local, county, or state ordinances and/or statutes relating to fire, health, sanitation, and building safety.

- Fees

(d) Fees for Application for Certification of Nonpublic Schools or Nonpublic Agencies.

(1) An annual application fee shall be required of all nonpublic schools and agencies applying for certification or renewal of certification. The Superintendent may adjust the annual fee commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this

section, the base for setting and adjusting fees will be the following:

(A) 1-24 pupils - $50
(B) 25-75 pupils - $75
(C) 76 pupils and over - $100

(2) Each application will be considered as that of a nonpublic school or nonpublic agency having one site.

(3) These fees shall be used by the State Department of Education for the purpose of conducting on-site reviews in conjunction with the administration of nonpublic school and agency certification.

(4) No fee shall be refunded to the applicant if the application is withdrawn or if the application is denied by the Superintendent.

- Filing Period

(e) Filing Period. The period for filing an initial application for nonpublic school certification shall be from July 1 through January 31, of each school year. A nonpublic agency may file an initial application at any time. Renewal application dates shall be determined by the Superintendent.

- On-Site Review

(f) On-Site Review. The Superintendent shall conduct an on-site review of all the nonpublic schools prior to initial certification and shall conduct an on-site review prior to renewal certification.

The nonpublic school shall be given a minimum of ten (10) days prior notice before an on-site review. The person serving as the review team chairperson shall confer with the school administrator at least 48 hours prior to the on-site review to discuss the procedures and the number of days required for the review. The chairperson shall indicate those persons who are to participate in the on-site review.

[Authority cited: Section 56100(a), (i) and (j), Education Code; 20 U.S.C. 1414(c) (2) (B); and 34 CFR 300.600] [Reference: Sections 56345 and 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300-343-348 and 300.400-403]

- Nonpublic School/Agency Certification Procedures

- Effective Date

3065. (a) Certification. Certification shall become effective on the date when the nonpublic school or agency meets all the application requirements and is approved by the Superintendent, except as specified in Section 3064(a).

- Issuance Time Line

(b) A certificate shall be issued by the Superintendent within thirty (30) days after the application has been approved.

- Application Review

(c) Application Review. The Superintendent shall make a determination on each application for nonpublic school or agency certification within 120 days of receipt of the application and shall either issue certification, conditional certification, or notify the nonpublic school or agency that certification is denied, and include the reasons for denial. If one of these actions is not taken by the Superintendent within 120 days, the nonpublic school or nonpublic agency shall automatically be granted conditional certification for a period terminating on August 31 of the current school year.

- On-Site Monitoring

(d) On-Site Monitoring. Nonpublic schools or nonpublic agencies may be monitored at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child or group of children. The Superintendent shall document the concern and submit it to the nonpublic school or nonpublic agency at the time of the on-site monitoring. The Superintendent shall request a written response to any noncompliance or deficiency found.

- Issuance of the Certificate

(e) Issuance of the Certificate. The Superintendent shall issue a certificate to the applicant for a period of no longer than five years. Certificates issued shall expire on August 31 of the terminating year.

- Revocation or Suspension of the Certification

(f) Revocation or Suspension of the Certification. The Superintendent may suspend or revoke any certification for any of the following reasons:

(1) Committing, aiding, abetting, or permitting the violation of any applicable state or federal rules and regulations of the Superintendent or the State Board of Education.

(2) Falsification or intentional misrepresentation of any elements of the application, pupil records, or program presented for certification purposes.

(3) Conduct in the operation or maintenance of the nonpublic school or nonpublic agency which is harmful to the health, welfare, or safety of an individual with exceptional needs.

(4) Breach of contract where the nonpublic school or agency fails to comply with any component(s) agreed to in the contract by both parties.

(5) Failure to notify the Department of changes in credentialed staff, ownership, management, and/or control of the nonpublic school or agency, major modification, relocation of facilities, or

significant modification of program.

(6) Failure to implement recommendations and compliance requirements subsequent to program reviews.

(7) Failure to provide appropriate supplies, equipment, or facilities for a pupil as required in the individualized education program.

(8) Failure to notify the Superintendent within ten days of any revocation of any license or permit, such as residential care license, business license, or other license or permit.

- Appeals

(g) Appeals of Denial, Revocation, or Suspension of Certification.

(1) Within twenty (20) workdays following the nonpublic school's or nonpublic agency's receipt of the notice of denial of certification, revocation or suspension of certification, the nonpublic school or nonpublic agency may file a written petition to request a review of the decision by the Superintendent. The petition may include a written argument and/or a request to present an oral argument.

(2) Within thirty (30) workdays of receipt of the written petition, the Superintendent or designee shall review the decision and applicant's petition and render a written, reasoned decision which shall be the final administrative decision. The designee of the Superintendent shall be impartial, unbiased, and shall not have participated in the Department decision to revoke or suspend the nonpublic school or nonpublic agency certificate.

- Request for Review of Status of Nonpublic School or Agency

(h) Any public education agency which contracts with a certified nonpublic school or nonpublic agency may request the Superintendent to review the status of the nonpublic school or agency. Such request shall be in writing and a copy sent to the nonpublic school or agency.

[Authority cited: Section 56100(a), (i) and (j), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 56345 and 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403]

- Determining Appropriate Nonpublic School or Nonpublic Agency Services

3066. (a) Following determination by the individualized education program team that the pupil requires nonpublic school or nonpublic agency placement, the public education agency shall:

(1) In consultation with the parents and other public agencies which may have financial responsibilities for the placement of the individual, select from the "Directory of Certified

Nonpublic Schools and Agencies" one or more nonpublic schools or agencies certified by the Superintendent for the purpose of determining which nonpublic school or agency can implement the pupil's individualized education program. Such nonpublic schools or agencies shall provide credentials, licenses, or other documents when requested by the public education agency to determine the ability of the nonpublic school or agency to provide the services required by the individualized education program.

(2) Review the certificate issued to the nonpublic school or agency to determine which services the school or agency is authorized to provide.

(3) In consultation with the parent(s), select the California State-certified nonpublic school or agency which gives evidence of the ability to implement the pupil's individualized education program. Consideration shall be given to the appropriate:

(A) Nonpublic school or agency closest to the home of the pupil;

(B) Nonpublic school or agency that can provide opportunities for interaction with nonhandicapped pupils to the extent appropriate;

(C) Program with the lowest total cost, given two or more appropriate nonpublic school or agency programs.

(4) With the consent of the parent, provide the selected nonpublic school or agency with current assessment data, the individualized education program, and all other relevant information in the pupil record.

(5) Contact the selected nonpublic school or agency to determine the nonpublic school's or agency's interest and ability to implement the pupil's individualized education program.

(6) Invite the identified and selected nonpublic school or agency representatives to participate in the finalization of the individualized education program.

(7) Ensure that after placement the appropriate nonpublic school or agency personnel participate in any subsequent meetings of the individualized education program team.

- Master Contract

(b) A master contract by a district, special education services region, or county office shall be used for contracting purposes. The term of the contract shall not exceed one year. The contract shall specify the administrative and financial agreements between the public education agency and the nonpublic school or agency.

The nonpublic school or agency shall not charge parents for services covered in the contract with the public education agency on a prepayment or reimbursement basis. No contract with the public education agency shall be contingent upon nonpublic school or agency individual contracts or agreements with parents.

If specified in the contract, the nonpublic school may subcontract with State-certified agencies for services.

- Components of Contract

(c) Components of the Contract. The contract shall include, but not be limited to, the following provisions:

(1) General provisions relating to: modifications, waivers, disputes, subcontracts, and assignments, contractor status, conflicts of interest, termination, inspection and audits, compliance with applicable state and federal laws and regulations, attendance, record-keeping, and reporting requirements.

(2) Payment schedules to include, but not be limited to: payment amounts, payment demand, right to withhold, and audit exceptions.

(3) Indemnification and reasonable insurance requirements.

(4) Procedures and fiscal responsibilities for attendance and unexcused absences.

- Financial Agreeements

(d) Financial Agreements. The nonpublic school or agency may, upon selection, enter into contract negotiations. If the nonpublic school or agency agrees to enter into contract negotiations and has agreed in writing to a final per diem rate for special education and related services, the pupil shall be placed immediately in the nonpublic school or nonpublic agency.

- Contracts

(e) Contracts. Contracts with those nonpublic schools and agencies which will continue to be used by the public education agency for the following school terms, shall be negotiated prior to June 30.

(f) Dual Enrollment.

- Dual Enrollment

(1) Services may be provided through dual enrollment in public and nonpublic school or nonpublic agency programs to meet the educational requirements specified in the individualized education program. The contract shall specify the provider of each service.

(A) The individual shall be formally enrolled in both nonpublic and public programs.

(B) The nonpublic school or nonpublic agency shall be reimbursed by the local public education agency for services as agreed upon in the contract.

(C) The local public education agency may make claims to the State for all authorized education services provided by the public education agency.

(g) Transportation of Individuals.

- Transportation

(1) In lieu of providing transportation of an individual, the public education agency may reimburse the parent or nonpublic school subject to a written agreement or contract for cost of actual and necessary travel incurred in transporting the individual with exceptional needs at a rate to be determined by the public education agency governing board, but no less than the rate allowed for travel by the public education agency employees.

(2) As specified in the individualized education program, the public education agency shall authorize payment for the number of trips required by parents or other carriers to transport the individual between home and school.

(3) Individuals with exceptional needs who are authorized to travel by municipal carriers shall be given a monthly pass or other means of paying for the service which may include reimbursement agreed to by the parents.

(4) Individuals placed in residential nonpublic schools by a public education agency shall, if specified in the individualized education program, be transported to and from the facility at no cost to the parents. Additional trips for individuals with exceptional needs, if required during the period of the contract, shall also be specified in the individualized education program. Reimbursement shall be made at the rate of the least expensive air, train, or bus fare. The public education agency shall authorize a per diem to cover expenses for travel which are specified in the individualized education program and consistent with that of the public education agency.

[Authority cited: Section 56100(a), (i) and (j), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 56345 and 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403]

- Change in Residence

3067. (a) The contracting public education agency and nonpublic school or agency shall notify parents of their responsibility to report each change in residence. Such notice by the contracting public education agency shall be in writing and given at the time nonpublic school or agency placement is recommended. Such notice shall include an explanation that the contract for services is between the contracting public agency and nonpublic school or agency and obligates no other public agency in the event of a residence change.

(b) When an individual receiving services under this article changes residence, and such change constitutes a change of public education agencies, the following shall occur:

- Change of Public Education Agencies

(1) The parent shall immediately report the change of residence to the administrator of both the former and new public school and the nonpublic school or nonpublic agency. Failure to do so may result in the parent having the fiscal responsibility until written notification is made, if the parent's failure was willful.

(2) The contracting nonpublic school or nonpublic agency shall immediately notify the superintendent of the public education agencies in both former and new residence areas.

(3) The superintendent or designee of the public education agency making payment to the nonpublic school or nonpublic agency shall immediately notify the new public education agency of the individual's change of residence. This notice shall include a copy of the individual's records, including the individualized education program and the contract for services with the nonpublic school or nonpublic agency.

- Review of IEP

(c) The pupil's individualized education program shall be reviewed by the new public education agency within fifteen (15) workdays of the receipt of the records. The new public education agency may make an interim placement if it has a comparable public school program that it reasonably believes can meet the pupil's needs for services, including frequency and other considerations as identified in the pupil's individualized education program, or it may allow the pupil to remain at the nonpublic school or agency during the time necessary to complete the individualized education program review. In such case, interim payment shall be made pursuant to paragraph (e) of this section.

- Factors to be Considered

(d) The following factors shall be considered by the individualized education program team in determining the continued appropriateness of the nonpublic school or agency:

(1) No appropriate public education program is available.

(2) To move the individual at the time of the change of residence would be harmful to the health, welfare, or educational progress of the individual.

(3) The nonpublic school or agency continues to be within a reasonable distance and/or travel time from the home of the individual.

(4) Other contingencies which necessitate the individual remaining at the nonpublic school as determined by the individualized education program team.

- Per Diem Rate

(e) If the individual remains in the nonpublic school or nonpublic agency during the period required to review the pupil's individualized education program, pursuant to paragraph (c), and the individual is registered in the new public education agency, the per diem rate in effect in the prior contract shall be honored by the receiving public education agency and continued until a new contract is negotiated.

- New Contract

(f) After the review has been conducted and if the individualized education program team determines that no appropriate public education program is available, the new public education agency shall negotiate a new contract for nonpublic school services.

(1) When the new contract is negotiated, the nonpublic school or nonpublic agency shall adjust the first claim following negotiation of the contract to account for any changes between the interim rate and the final per diem rate.

(2) The per diem rate or the rates for related services shall not be increased by the nonpublic school or nonpublic agency during the then current school year.

- Financial Responsibility

(g) The financial responsibility of the former public education agency shall terminate on the last day of the individual's residence in that district.

[Authority cited: Section 56100(a), (i), and (j), Education Code; Section 7570 Government Code] [Reference: Sections 56345, 56365, Education Code; and 34 CFR 300.2(c), 300.4, 300.343, 300.347, and 300.348]

- Annual Review of Individualized Education Program

3068. Review of the pupil's individualized education program shall be conducted at least annually by the public education agency. The public education agency shall ensure that review schedules are specified in the individualized education program and contract for the pupil.

An elementary school district shall notify a high school district of all pupils placed in nonpublic school or agency programs prior to the annual review of the individualized education program for each pupil who may transfer to the high school district.

[Authority cited: Sections 56100(a), (i), (j), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 56345, 56365-56366.5, Education Code and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403]

- Graduation

3069. When an individual with exceptional needs meets public education agency requirements for completion of prescribed course of study and adopted differential proficiency standards as designated in the pupil's individualized education program, the public education agency which developed the individualized education program shall award the diploma.

[Authority cited: Sections 56100(a), (i), (j), Education Code; 20 USC 1414(c)(2)(B); and 34 CFR 300.600] [Reference: Sections 56345, 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403]

## Article 7. Procedural Safeguards

- PROCEDURAL SAFEGUARDS

- General Provisions

3080. (a) Section 3081 applies to the filing of a complaint, in accordance with provisions of Title 34, Code of Federal Regulations, Section 76.780-783, regarding a public agency's alleged violation of federal or state law or regulation relating to the provision of a free appropriate public education.

(b) Section 3082 applies to due process hearing procedures which govern the resolution of disagreements between a parent and a public agency regarding the proposal, or refusal of a public agency to initiate or change the identification, assessment, or educational placement of the pupil or the provision of a free appropriate public education to the pupil.

[Authority cited: Sections 56100(a) and (j), Education Code] [Reference: Sections 56500.1, 56500.2, Education Code; and 34 CFR 76.780-783]

- Complaint Procedures
  - Notice and Filing Procedures

3081. (a) Notice and Filing Procedures.

(1) Public education agencies shall annually notify individuals, agencies, and organizations of their right to file a complaint under this section and of the procedures for implementation. Such notification shall include annual notice in a newspaper with local distribution of the right to file a complaint under this section and of the procedures for implementation, and individual notice to parents or guardians in their primary language or other mode of communication at least annually in conjunction with the public education agency's normal notification procedures.

(2) Any individual, public agency, or organization may file a written complaint with the

Superintendent of Public Instruction with a copy to the involved public agency alleging a matter which, if true, would constitute a violation by that public agency of federal or state law or regulation governing special education and related services.

(3) If the complainant files a written complaint with the superintendent of the concerned public education agency, the local superintendent shall upon receipt transmit the complaint to the Superintendent of Public Instruction, and the procedures in Section 3081(c) shall be followed.

- Information to Support Complaints

(b) Each person or organization filing a complaint pursuant to Section 3081(a) shall provide any and all information the complainant believes will support the complaint.

- Procedures for Resolution of Complaints

(c) The following procedures will be followed by the Superintendent of Public Instruction or his or her designated compliance specialist for the resolution of complaints:

(1) All complaints received by the Department of Education shall be referred to the Special Education Division, which shall designate specific individuals within the Special Education Division who will be responsible for the processing of the complaint. Such individuals shall be knowledgeable of federal and state laws and regulations pertaining to the education of individuals with exceptional needs.

(2) The complainant filing an oral complaint shall be informed of the procedure for filing a written complaint. The complainant shall be informed of the availability of a list of free or low-cost legal services and other relevant services within the geographical area.

(3) Upon receipt of a written complaint, the State Department of Education shall within five (5) days so inform the public agency involved and nonpublic school or agency, as applicable, and the complainant in writing, and a file shall be opened in the Special Education Division. Maintenance of the file shall be in accordance with existing federal and state laws and regulations relating to confidentiality, including Education Sections 49060 et seq.

(4) The complaint shall be reviewed within five days to determine whether direct state intervention is necessary pursuant to Section 3081(d), or whether the complaint must first be investigated by the public education agency pursuant to Section 3081(f).

- Direct State Intervention

(d) The State Department of Education shall intervene directly if one of the following criteria is met:

(1) When the complaint indicates that the public education agency has failed or refused to implement the local-level complaint procedure.

(2) When the complaint indicates that the public agency has failed or refused to implement a final decision from a due process hearing.

(3) When the complaint includes information which indicates that the public agency fails or refuses to comply with the due process procedures or requirements established in federal and state law or regulations to resolve disagreements between the parent and the public education agency through the due process procedures.

(4) When the State Superintendent of Public Instruction or designee determines that the alleged violation presents an immediate danger to the health, safety, or welfare of a child or group of children.

(5) When the complaint indicates that a public agency other than a district, county office, or special education local plan area fails or refuses to comply with federal or state law or regulation relating to the provision of a free appropriate public education.

- Procedures

(e) If the complaint is determined to be appropriate for direct intervention by the State Department of Education, the procedures set forth in Section 3081(i)(2) and (j)(2) shall be followed for such complaint. If the complaint does not meet the criteria for direct State Department of Education intervention, a copy of the complaint shall be sent immediately to the involved local public education agency and the agency shall be directed to implement local complaint procedures in accordance with Section 3081(f). The time lines for local resolution shall commence as of the date of receipt by the involved public education agency of the copy of the complaint. The complainant shall be immediately notified in his or her primary language or other mode of communication by the State Superintendent of Public Instruction or designee of the action taken and of the local procedures to be followed in handling complaints.

- Responsibilities of Involved Public Education Agency

(f) Within thirty (30) days from the receipt of the complaint from the State Department of Education, the superintendent or designee of the involved public education agency shall:

(1) Investigate the complaint and prepare a written report of the findings, conclusions, and rationale for the conclusions, and corrective action, if necessary. This report shall be in English and, when necessary, in the primary language or mode of communication of the

complainant, and shall include a notice of the complainant's right to a review of the local decision by the local board of education and State Superintendent of Public Instruction, pursuant to Section 3081(g) and (h) and the procedure to be followed in requesting a review.

(2) Provide the complainant with a copy of the report no later than five (5) days after completion and within the thirty (30) days allowed for investigation and reporting.

(3) Submit a copy to the local governing board and schedule and conduct a hearing before the board within the thirty (30) days allowed, and notify the complainant of the hearing date, time, and location.

(4) Prepare a report of the findings, rationale for conclusions, and corrective actions if necessary, which shall be forwarded by the public education agency to the Special Education Division following the local governing board meeting at which the complaint is scheduled and within the 30 days allowed for investigation and reporting.

- Remedies Available to Complainant if Dissatisfied with Decision Rendered by Public Education Agency or Local Board

(g) The complainant may pursue either of the following remedies if he/she is dissatisfied with the decision rendered by the superintendent of the public education agency or the local governing board of education:

(1) Appear at the scheduled hearing before the local governing board of education regarding the complaint. The local governing board is empowered to affirm, reverse, or revise the decision of the superintendent of the public agency if the complainant has submitted evidence or argument, either written or oral, to the board opposing the local superintendent's decision. If the local superintendent and complainant agree to the superintendent's decision, and the local board disagrees, the local governing board shall provide notice to the complainant and grant the complainant the right to a second hearing before any action is taken to the contrary. This shall be completed within the thirty (30) days specified in Section 3081(f) unless the complainant agrees to an extension of the time line. The complainant may then appeal to the Superintendent of Public Instruction for review of the local decision if he or she is dissatisfied with the local board's resolution.

(2) Waive the right to a hearing before the local governing board and appeal directly to the State Department of Education for review of the local decision pursuant to this section.

(h) Procedure for an appeal of a complaint.

- Procedures for an Appeal

(1) Any appeal to the State Department of Education for review of a district-level decision shall be made within fifteen (15) days following receipt by the complainant of the final written report of the decision of the local governing board.

- Procedure for Investigation

(i) Procedure for investigation:

(1) Upon receipt of the request for an appeal, the following information shall be obtained, for the purpose of conducting an impartial review:

(A) Copies of all documents prepared and/or reviewed.

(B) Copies of findings, rationale for conclusions, and corrective action when required.

(C) Any other pertinent materials including any submitted by the complainant for this purpose.

(2) Any appropriate actions necessary to investigate the complaint may be taken, including telephone calls and/or on-site visits. At any point in the review either party may submit additional information related to the complaint. As part of the investigation, the complainant shall be provided with an opportunity to respond to information obtained from the public education agency.

- Time Lines

(j) Time lines:

(1) If a complaint is appealed to the Superintendent of Public Instruction or designee, the impartial review shall be completed and a written report including findings, conclusions, rationale for conclusions, and corrective action, if necessary, shall be rendered within twenty-five (25) calendar days of the receipt of the request for an appeal. This report shall be in English and, when necessary, in the primary language or mode of communication of the complainant, and shall include a notice of the complainant's right to request a review of the State Department of Education's decision by the federal Education Department pursuant to Title 34, Code of Federal Regulations, Section 76.781 (c).

(2) If a complaint is accepted by the State Department of Education for direct intervention pursuant to Section 3081(d), the complaint shall be investigated and a written report including findings, conclusions, rationale for conclusions, and corrective action, if necessary, shall be completed within thirty (30) days of receipt of the complaint. This report shall be in English, and when necessary, in the primary language or mode of communication of the complainant, and shall include a notice of the complainant's right to request a review of the State Department of Education's

decision by the federal Education Department pursuant to Title 34, Code of Federal Regulations, Section 76.781(c).

(k) Resolution.

- Resolution

(1) The Superintendent of Public Instruction's compliance report shall be sent to the complainant, the public education agency involved, and the appropriate governing board.

(2) If an investigation pursuant to Section 3081(i) indicates a failure to comply with law or regulation, the public education agency and complainant shall be so informed in the compliance report. If corrective action is required, such action shall be designated in the compliance report, and shall include the time lines for correction and the consequences for continued noncompliance. The State Department of Education retains jurisdiction over the implementation of the corrective action. Records shall be available upon request, pursuant to Government Code Sections 6250 to 6265 and Title 5 California Code of Regulations Section 50 to 51.

(3) The Department of Education shall monitor the public agencies' compliance with any required corrective action through a follow-up procedure.

(4) If there appears to be a failure or refusal to comply with the law or regulations, and if the noncompliance or refusal to comply cannot be rectified by informal means, compliance shall be effected by the Superintendent and the State Board of Education in the most efficient and expeditious manner authorized by law. Such procedures may include, but are not limited to, proceeding in the Superior Court for an appropriate order compelling compliance or proceeding to recover or curtail state funding to the noncompliant local education agency.

(l) No decision to curtail or recover state funding to an education agency shall be made by the Superintendent of Public Instruction or the State Board until:

- Curtailing or Recovering State Funding

(1) The Superintendent of Public Instruction or the State Board has determined that compliance cannot be secured by voluntary means.

(2) The public education agency has been notified in writing of its failure to comply and advised of its right to appeal and the basis for the determination of noncompliance.

(3) The expiration of at least thirty (30) days from the mailing or personal service of such notice to the superintendent of the public education agency during which period additional efforts shall be taken by the Superintendent of Public

Instruction to enlist the public education agency's compliance with federal or state law or regulations and to take such corrective action as may be required for compliance.

- Post-Decision Proceedings

(m) Post-decision proceedings. A public education agency adversely affected by a decision to curtail state funding shall be restored to eligibility for state financial assistance if it brings itself into compliance with federal or state law or regulations and provides such assurance as the Superintendent of Public Instruction or State Board shall require that it will comply with law or regulations.

- Complaints Against State Department of Education

(n) Complaints against the State Department of Education can be filed with the State Superintendent of Public Instruction.

- Report of State Appeals and Complaints

(o) The report of state appeals and complaints accepted for initial intervention shall be submitted annually to the State Board of Education as an informational item.

[NOTE: Authority cited: Sections 56100(a) and (j), Education Code] [Reference: Sections 56500.1, 56500.2, Education Code; and 34 CFR 76.780-783]

- Due Process Hearing Procedures

3082. (a) A parent or public education agency may initiate a hearing pursuant to Education Code Sections 56500 through 56507 and Title 34, Code of Federal Regulations, Sections 300.506 through 300.514 on any of the matters described in Education Code Section 56501. The hearing shall be conducted by a hearing officer knowledgeable in administrative hearings and under contract with the State Department of Education.

- Evidence

(b) The hearings conducted pursuant to this section shall not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

- Additional Rights

(c) In addition to the rights afforded both parties to the hearing pursuant to Education Code

Sections 56500-56507 and Title 34, Code of Federal Regulations, Section 300.514, the parties shall also have the following rights:

(1) To call witnesses, including adverse witnesses, and to cross examine witnesses for the other party.

(2) To compel the attendance of witnesses. The hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party).

(3) Absent compelling circumstances to the contrary, and upon motion to the hearing officer to have witnesses excluded from the hearing.

- Hearings Conducted in English; Provision for Interpreter

(d) Hearings shall be conducted in the English language; when the primary language of a party to a hearing is other than English, or other mode of communication, an interpreter shall be provided who is competent as determined by the hearing officer. Cost for an interpreter shall be borne by the State Department of Education.

- Attorney as an Observer

(e) If either the school district or the parents have an attorney present as an observer, the attorney may watch the proceedings to advise his party at a later date, but the attorney may not present oral argument, written argument or evidence, or consult in any manner in or out of the room, during the due process hearing.

[Authority cited: Sections 56100(a) and (j), Education Code] [Reference: Sections 56500-56507, Education Code; and 34 CFR 300.506-514]

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